Government of **Western Australia**
Department of **Housing and Works**

Request

REQUEST TITLE:

Interior Fitout and Workplace Design Services Panel 2020

REQUEST NUMBER:

BMW0531018

CLOSING TIME:

23 July 2019 at 2:30 PM, Australian Western Standard Time

ISSUED BY:

Department of Housing and Works on behalf of the Minister for Works

Reference Only

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Interior Fitout and Workplace Design Services Panel 2020

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AMENDMENTS LOG
THIS LOG IS FOR INFORMATION PUPROSES ONLY AND DOES NOT FORM PART OF THE PROPOSAL BRIEF

NO	CLAUSE	AMENDMENT	EFFECTIVE DATE
1.1	All sections	Change all references to finance.wa.gov.au website to the new wa.gov.au website	1 Jan 2020
	D.2.7 Consultants Attestation for Requests for tenders	Additional requirement added 'the Consultant and any secondary or sub-consultant has not received any financial incentive to specifying any materials, products or components of the Works.	
1.2	All sections	Replace references to "Building Management and Works" or "BMW" with "Department of Finance" or "Finance"	1 Mar 2020
1.3	Schedule 3 to Part D: COVID-19	In response to the COVID-19 pandemic, the Principal wishes to incorporate COVID-19 specific relief provisions into the Contract.	31 Jul 2020
	C.2.1. Definitions	Definition of Buy Local Policy amended.	
1.4	C.2.1. Definitions	In accordance with the direction that the Buy Local Policy 2002 be phased out during a planned 6-month transition to the WA Buy Local Policy 2020, please be advised that the definition of Buy Local Policy has been amended.	22 Sep 2020
1.5	All Sections	Remove or replace references to "Department of Finance" or "Finance" with "Department of Housing and Works", "Housing and Works, or "DoHW" where appropriate. Various other references updated accordingly.	1 Jul 2025
1.6	Schedule 1 to Part B – 8(f) / C.10.6 / D.2.12 — Application of Privacy Laws and PRIS Act	**New clause added:** Reference to the *Privacy and Responsible Information Sharing Act 2024 (WA)* (PRIS Act) to address privacy obligations and responsible information-sharing requirements applicable from 1 July 2026.	28 Oct 2026
	C.3.1. Head Agreement Term	Updated Panel term to reflect revised expiry date of 6 November 2028.	
	C.3.2. Extension by Principal		

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

PART A OVERVIEW OF REQUIREMENT

A.1. BACKGROUND

The Department of Housing and Works provides services and advice to government in relation to the design, construction and asset management of major State Government public buildings such as hospitals, schools, police stations, and also for general Government office accommodation.

State Government buildings include both leased and owned premises in the Central Business District, metropolitan and regional locations. The Department of Housing and Works is responsible for procuring and managing over 560,000 square metres of government office accommodation with over 470,000 square metres of leased space and 90,000 square metres of space vested with the Minister for Works across 20 buildings.

To support the planning, design and fitout of office space for Government agencies and members of parliament, the Department of Housing and Works seeks to engage suitably qualified firms to undertake design and interior fitout services for metropolitan based projects only.

The purpose of this Request is to invite Offers from suitably qualified entities seeking to be considered for inclusion in the Panel to provide Interior Fitout and Workplace Design Services.

A.2. STRUCTURE OF THE REQUEST AND SUPPORTING DOCUMENTATION

The Request is structured as follows:

Part A: Overview of Requirement (this section)

Part A summarises the Principal's requirements. In the event of an inconsistency between Part A and other parts of the Request, the other parts take precedence. Contained in Part A is '*Schedule 1 to Part A: Past Transaction Data*'.

The information provided in this Part A is for ease of reference only and does not affect the interpretation of the Request.

Part B: Conditions of Request

Part B defines the process by which the Principal is inviting Offers and how those Offers will be assessed. Contained in Part B is '*Schedule 1 to Part B: Request Conditions*'.

Part C: Head Agreement Conditions

Part C defines the formation and operation of the Panel, and the terms and conditions of the Head Agreement. The Head Agreement creates the standing offer arrangement through which the Principal may engage Panel Members to undertake interior fitout and workplace design services. Contained in Part C is '*Schedule 1 to Part C: Buying Rules'.*

Part D: Conditions of Contract

Part D defines the terms and conditions that apply when the Principal places a Contract under the Head Agreement. Contained in Part D is

Reference Only

'*Schedule 1 to Part D: WA Government Amendments to AS 4122-2010*' and '*Schedule 2 to Part D: Annexure to General Conditions of Contract*'.

Part E: Content Requirements for Respondent's Offer

Part E identifies the information that must be provided by Respondents as part of their Offer. Contained in Part E is '*Schedule 1 to Part E: Forms to be Completed'*. Respondents should ensure that they consider the information provided in Part E and take this into account in completing their Offer.

In addition to the contents of the Request reference is also made to the Interior Fitout and Workplace Design Brief (the Brief), which must be considered by Respondents in preparing an Offer in response to the Request.

The Brief outlines the roles and responsibilities of the Services to be provided under the Panel. Respondents can obtain a copy of the Brief from WA Government website at https://www.wa.gov.au/government/publications/interior-fitout-and-workplace-design-services-2020-brief

Respondents should also familiarise themselves with the Department of Housing and Works Consultant Performance Reporting system and the Department of Housing and Works Supplier Demerit Scheme available on the WA Government website at https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects.

The following Australian Standards (AS) available from Standards Australia at www.standards.org.au are also relevant to the formation of an Offer.

a. AS 4122 - 2010 General Conditions of Contract for Consultants, which should be read in conjunction with the WA Government Amendments to AS4122-2010 contained in *Schedule 1 to Part D* of the Request.

b. AS 2124 - 1992 General Conditions of Contract.

A.3. DEFINITIONS AND INTERPRETATIONS

The definitions and interpretations included in Part C apply throughout the Request.

A.4. PANEL SCOPE

The Panel is being formed under the works procurement framework established by the *Public Works Act 1902* (WA), with the Minister for Works identified as the Principal (also referred to as the Client in the Australian Standard General Conditions of Contract for Consultants, AS4122: 2010). Department of Housing and Works will represent the Minister for Works for the purpose of the Panel.

The Panel is designed for use by the Department of Housing and Works to support its role in managing government's office accommodation portfolio.

The Panel applies to metropolitan-based projects only, with any regionally-based projects to be procured outside the Panel using the Department's standard procurement processes.

Reference Only

A.5. PANEL STRUCTURE

The Panel is a commercial arrangement defined by the terms and conditions contained in a Head Agreement that constitutes a standing offer for the provision of Interior Fitout and Workplace Design Services involving Contracts up to $1,000,000 (including GST but excluding disbursements).

The terms and conditions that apply to an individual contract award will be defined in that Contract and will constitute a binding agreement to deliver defined Services for an identified Fee.

A.6. PANEL COMMENCEMENT AND TERM

The proposed Panel Commencement Date is 1 January 2020. The Principal reserves the right to amend the Commencement Date and where this occurs any reference to the Panel Commencement Date will be a reference to the revised date of Panel commencement.

The term of the Panel will be for two years with an option for the Principal to extend the Panel by up to a further three years (refer to clauses C.3.1 and C.3.2).

A.7. SUMMARY OF SERVICES PROVIDED THROUGH THE PANEL

The Panel will provide access to the services of professional consultants to design and deliver new, or alterations to existing, office fitouts in owned and leased metropolitan government office buildings.

The Services are described in detail in the Brief, with the following standard scope of services:

a. management of the Project;
b. establishment of brief and brief finalisation;
c. site investigation;
d. schematic design;
e. design development;
f. contract documentation;
g. tender assessment;
h. contract administration;
i. furniture selections and scheduling; and
j. project handover.

The Consultant project team may be required to undertake feasibility study services or other services on an hourly rates basis, unless otherwise agreed.

Consultants may also be required to undertake any other services specified in the Interior Fitout and Workplace Design Brief.

The Services will be described in line with the requirements of a ‘construct only’ project delivery strategy. Where an alternate delivery strategy, such as design and construct, is utilised, the Panel may still be used, with the Services and corresponding fees being determined on a case by case basis.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

A.8. COMPLETING THE SUBMISSION

Respondents should familiarise themselves with all parts of the Request and the Brief prior to submitting an Offer.

Respondents should also be aware that in evaluating submissions, the Principal:

a. requires Respondents to complete the specific forms provided in *Schedule 1 to Part E: Forms To Be Completed*, as detailed in the Schedule;

b. may not assess any material that exceeds the identified limits for each of the forms that a Respondent is to complete; and

c. will only consider content that is directly relevant to the identified criteria.

Respondents are also advised not to include any content that is of a promotional or advertising nature.

A.9. BUYING RULES

The Principal will consider the Buying Rules in determining if and how to engage a Panel Member for particular Services.

The Principal has the discretion to award contracts for Services outside the Panel.

A.10. EXTENT OF PREVIOUS PANEL USAGE

The existing Panel arrangement ceases on 31 December 2019. During its operation from 1 January 2015 to March 2019, approximately 67 individual contracts totalling $4,228,751 were directed through the Panel.

Schedule 1 to Part A: Past Transaction Data contains an overview of the existing Panel usage and contract award statistics since its commencement in 2015. The data has been included to assist Respondents in preparing their Offer.

However, it should be noted that demand has, and will continue to fluctuate year to year. Consequently, Respondents should be aware that future demand may not correspond to historical demand and no guarantee is given in relation to the number or value of Contracts offered to Panel Members.

Reference Only

PART A

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 1 TO PART A: PAST TRANSACTION DATA

Overview of the Existing Panel Usage and Spend Statistics (Approximate/Rounded).							
	Number of Panel Contracts Awarded	Total Value of Panel Contracts	Average Spend per Panel Contract	Number of Panel Contracts Over $50k	Value of Panel Contracts Over $50k	Number of Panel Contracts Below $50k	Value of Contracts Below $50k
2015	21	$1,433,670	$68,270	12	$1,106,842	9	$326,828
2016	18	$1,406,746	$78,153	11	$1,274,293	7	$132,453
2017	20	$873,550	$43,678	2	$580,206	18	$293,344
2018	6	$233,460	$38,910	1	$100,531	5	$132,929
2019	2	$281,325	$140,663	1	$235,290	1	$46,035
TOTAL	**67**	**$4,228,751**	**$63,116**	**27**	**$3,297,162**	**40**	**$931,589**

Reference Only

PART A

RESPONDENT TO READ AND KEEP THIS PART

PART B CONDITIONS OF REQUEST

B.1. REQUEST CONDITIONS

The Request Conditions associated with the Request (including late lodgement and mishandling) are included in *Schedule 1 to Part B: Request Conditions*.

B.2. APPLICATIONS FOR MEMBERSHIP OF THE PANEL

While the Principal reserves the right to refresh the Panel at any time, Respondents may only submit applications to become a member of the Panel in response to this initial release of the Request, in which case Offers must be submitted by the Closing Time.

The Principal reserves the right to consider applications at any time from suitably qualified Aboriginal Business and other applications received in response to a request from the Principal. Such applications will be subject to an assessment against the evaluation criteria as outlined in the Request. If successful, the applicant will be appointed to the Panel in addition to the existing Panel Members.

B.3. SUBMISSION OF OFFERS IN RESPONSE TO THE REQUEST

Respondents may submit their Offer:

Electronically:

Provided that the Respondent is registered with Tenders WA for electronic submission the Respondent may submit their Offer electronically by uploading one complete set of documents to a maximum limit of 100MB per upload request at: www.tenders.wa.gov.au. Respondents are strongly encouraged to register on Tenders WA website for free to ensure that they receive any amendments to the Request.

All electronic submissions must be in one or more of the following file formats:

.doc*	.pub*	.pdf#	.txt	.rtf	.ppt	.xls*

* Microsoft Compatible
\# Adobe Compatible
NB: Zipped Files Acceptable

By hand:

at Tendering Services, Ground Floor, Optima Centre, 16 Parkland Road, Osborne Park WA 6017.

Note - Offers submitted by hand must include one original and one copy on a USB/thumb drive. In the event discrepancies exist between the hard copy and electronic versions, the electronic version will take precedence.

B.4. OFFER VALIDITY PERIOD

The Offer Validity Period is for a period of nine calendar months commencing from the Closing Time.

Reference Only

PART A

RESPONDENT TO READ AND KEEP THIS PART

B.5. BRIEFING

A non-mandatory briefing for potential Respondents will be conducted at:

Date: 19 June 2019
Time: 4.30 pm
Location: Ground Floor,
Optima Centre
16 Parkland Road
Osborne Park, Western Australia

Potential Respondents are requested to confirm their attendance by no later than 18 June 2019 by registering at:
~~http://www.finance.oneit.com.au/dtf/ViewEvent.jsp?Tag=WA_EVENT&ID=851701~~

Please note: should the link not be accessible by clicking on it, access can be obtained by copying the link into your browser.

The Principal reserves the right to limit the number of Respondent's representatives that may attend.

B.6. CONTACT PERSONS

Details of the most appropriate contact persons are provided below. Respondents must not contact any other person within Government or any consultant engaged in relation to the Request to discuss the Request.

B.6.1. CONTRACTUAL AND ROUTINE ENQUIRIES

Name: Andrew Murray
Title: Procurement Officer
E-mail: WorksConsultancyPanels@DoHW.wa.gov.au

B.6.2. TECHNICAL ENQUIRIES – INTERIOR FITOUT

Name: Michael Couche
Title: Assistant Director Fitout Services

B.6.3. ADVICE ON SUBMITTING OFFERS

Name: Tendering Services
Telephone: (08) 6551 2345

B.6.4. ADVICE ON USING TENDERS WA

Name: Procurement Systems Support
Telephone: (08) 6551 2020

Reference Only

PART A

RESPONDENT TO READ AND KEEP THIS PART

B.7. SELECTION PROCESS

Value for money is a key policy objective in ensuring that the best possible procurement outcome is achieved. Value for money considerations move beyond simply cost impacts and involve a broader assessment of the benefits and risks associated with a contract award. In determining value for money in the assessment, the Principal will consider:

a. the application of relevant Departmental and Government policies;

b. the requirements and criteria identified in the Request, including the qualitative requirements;

c. the hourly rates identified in the Respondent's Hourly Rates Fee Schedule and the Respondent's Submitted Percentage Fee Schedule;

d. Aboriginal Business and Aboriginal Employment considerations; and

e. any other factors or information the Principal considers relevant.

B.7.1. COMPLIANCE WITH THE TERMS OF THE REQUEST

Respondents are required to confirm that they will comply with the terms of the Request by completing the relevant section of *Form 3 – Part E Compliance with terms of the Request.*

An Offer which fails to:

a. satisfy, comply or meet the requirements of the Request; or

b. include all information that has been requested,

may at the Principal's discretion:

a. be set aside, in whole or in part, at any point during the process and not considered any further;

b. continue to be assessed considering any failure as part of the assessment process.

B.7.2. PANEL APPOINTMENT PROCESS

The Principal intends to appoint approximately 15 Panel Members. However, the Principal reserves the right to appoint as many or as few Panel Members as it sees fit.

B.7.2.1. Assessment of Offers

Offers in relation to Panel membership will be assessed against the:

a. Pre-Qualification Requirements described in E.4;

b. Disclosure Requirements described in E.5;

c. Qualitative Requirements described in E.9;

d. The Percentage Fee Schedule submitted by the Respondent in accordance with Form 11, to be assessed as described in E.10.1 including, if applicable, application of the Aboriginal Business and Employment Tendering Preference to the submitted percentage fee schedule as described in E.10.1; and

e. The Hourly Rates Fee Schedule submitted by the Respondent in accordance with Form 10, to be assessed as described in E.10.2.

Provided the prequalification requirements have been met and there are no compliance issues that are unacceptable to the Principal, then Respondents will be ranked based on the

Reference Only

assessment of the qualitative requirements and the submitted fees, followed by a value for money assessment as described at B.7 to determine final rankings.

This ranking will then be used to determine which Respondents will be recommended for inclusion on the Panel.

B.8. DEPARTMENTAL AND GOVERNMENT POLICIES

The following Departmental works procurement policies apply to the Request:

a. Value for Money;

b. Probity and Accountability;

c. Open and Effective Competition; and

d. Aboriginal Business and Employment Tendering Preference Policy

These policies can be viewed at https://www.wa.gov.au/organisation/department-of-finance/procurement-policies

B.9. PERMANENT OPERATIONAL OFFICE

In addition to the Respondent identifying its principal place of business the Respondent must also identify in *Form 1: - Corporate Identity and Status* the location of any Permanent Operational Offices that the Respondent is claiming. Note: Information on Subconsultants is not to be included here as this information is requested later.

The Principal may request that the Respondent demonstrate the bona fides of any Permanent Operational Office and in assessing that information, may consider matters including those outlined in clause C.7.1.

Reference Only

PART A

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 1 TO PART B: REQUEST CONDITIONS

1 SUBMISSION OF OFFER

Any Offer which:

a. is not fully submitted before the Closing Time;

b. is incomplete at the Closing Time; or

c. is not submitted in accordance with the Request,

may be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer. For the purposes of the Request, mishandling will only have occurred where, in the case of submission of the Offer by hand, the Offer was received by the Principal prior to the Closing Time, but the Offer was not transferred by the Principal to the tender box by the Closing Time.

The Offer must be received in full by the Principal prior to the Closing Time. If the Respondent submits the Offer electronically, the Respondent agrees that:

d. receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Principal's computer records that the Offer was received;

e. if any files uploaded as part of the Offer contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Principal all costs incurred by the Principal arising from, or in connection with, the virus;

f. electronic lodgement of the Offer may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;

g. the Principal will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;

h. if the electronic copy of the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Principal may request the Respondent to provide another copy of the Offer either electronically or in hard copy or both;

i. if the Principal requests the provision of another copy of the Offer, then the Respondent must;

i. provide the copy in the form or forms requested within the period specified by the Principal;

ii. provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission; and

iii. provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

Reference Only

PART A

RESPONDENT TO READ AND KEEP THIS PART

2 AGREEMENT BY RESPONDENT

In submitting an Offer, the Respondent agrees that:

a. **(assignment)** the Offer may not be assigned without the prior written consent of the Principal;

b. **(liability)** where an Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Offer is binding on those persons jointly and severally;

c. **(property rights)** once submitted an Offer becomes the absolute property of the Principal and will not be returned to the Respondent. Nothing in this clause affects the Respondent's intellectual property rights in the Offer, except that the Principal may make such copies of the Offer as the Principal requires for the proper evaluation of the Offer;

d. **(agrees to the Request and Request Conditions)** it has read and understood the Request and these Request Conditions and agrees to abide by the requirements of those documents;

e. **(information true and correct)** all information in its Offer and all Offer Information is true and correct at the time of its submission;

f. **(relies on own enquiries)** other than in respect of information provided by the Principal to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request;

g. **(understood Request)** it has examined and understood the Request, each addendum issued under the Request and any other information available to the Respondent in respect of the Request;

h. **(understood Addenda)** prior to the Closing Time the Respondent must log on to Tenders WA [www.tenders.wa.gov.au] to ensure that prior to submitting its Offer it has examined and understood each Addendum in respect of the Request as by submitting its Offer it will be deemed to have examined and understood each Addendum;

i. **(made reasonable enquiries)** it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;

j. **(does not rely on warranties)** other than in respect of information provided by the Principal to the Respondent in writing, it does not rely on any warranty or representation of the Principal or any person actually or ostensibly acting on behalf of the Principal;

k. **(no reference to information on websites)** it must not make reference to any information contained on the Respondent's website or on any other website. Any information on the Respondent's website or on any other website which the Respondent wishes the Principal to rely on must be set out in full in the Respondent's Offer;

l. **(no secret commission)** it has not paid or received and will not pay or receive any secret commission in respect of the Request;

m. **(no collusion)** it has not colluded and will not collude with any other person in respect of the Request;

Reference Only

n. **(no inflation or deflation of rates and fees)** its submitted rates and fees are not inflated or deflated to advantage another Respondent;

o. **(no unlawful arrangement)** it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;

p. **(no improper influence)** it has not sought and will not seek to influence any decision in respect of the Request by improper means; and

q. **(own cost and expenses)** it will pay its own costs and expenses; irrespective of whether its Offer is accepted or not, in connection with:

i. the preparation and submission of its Offer; and

ii. any discussions, enquiries or negotiations with, or provision or consideration of further information to, the Principal, whether before or after the submission of any Offer.

3 CANCELLATION AND VARIATION OF THE REQUEST

The Principal reserves the right at any time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request. Where the Principal exercises that right then:

a. the Principal will advise each Respondent that the right has been exercised; and

b. the Respondent will not have any recourse against the Principal whatsoever including for claims for any costs or expenses incurred up to and including the date that the right was exercised.

4 PRINCIPAL'S RIGHTS

The Principal is under no obligation to accept any Offer, and at the Principal's sole and absolute discretion may reject any Offer or all Offers for any reason including:

a. **(failure to comply with Request Conditions)** if an Offer fails to comply with these Request Conditions;

b. **(failure to comply with requirements)** if an Offer fails to comply with any of the requirements set out in Parts B to E of the Request;

c. **(false or misleading)** if an Offer contains information or representations that are false or misleading;

d. **(change of control)** if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the *Corporations Act 2001* (Cth);

e. (**change of consortium membership**) in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or

f. (**change of policy or commercial reasons**) if the Principal decides to cancel the Request due to changes of policy or for commercial reasons.

After the Closing Time, the Principal may:

g. request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying or confirming the Offer; and

Reference Only

h. request information from the Respondent regarding the financial capacity of the Respondent,

and if so requested, the Respondent must promptly provide such information to the Principal.

No opportunity will be provided for amendment of any values of the submitted fees or amendment of other information initially submitted in the Offer.

In evaluating an Offer, the Principal may also consider any information regarding the Respondent that the Principal has in its possession or receives from any source, including information about the Respondent's past or current performance under any other contract, arrangement or dealing between the Respondent and a Public Authority.

The Principal reserves the right to conduct site visits as it deems appropriate.

5 DISCRETION

Whenever the Principal's consent is required under the Request, that consent may be given or withheld at the Principal's absolute discretion and may be given subject to such conditions as the Principal may determine.

6 OFFER VALIDITY

The Respondent agrees that its Offer will remain open for acceptance by the Principal for the Offer Validity Period, unless the Respondent withdraws its Offer by notifying the Principal in writing at any time prior to acceptance of its Offer.

The Offer Validity Period may be extended or further extended by the Principal by advising each Respondent in writing at any time or times.

7 NO BRIBE, INDUCEMENT OR OFFER OF EMPLOYMENT

The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Principal in connection with the Request.

The Respondent must not, without the prior written consent of the Principal, directly or indirectly approach or communicate with any officer or employee of the Principal having any connection or involvement with the Request, with respect to:

a. availability of employment; or

b. an offer of employment,

with the Respondent or any related entity.

8 DISCLOSURE OF OFFER INFORMATION

a. The Respondent acknowledges and agrees that the nature of the Panel requires its Offer and Offer Information to be available to the Principal's employees.

b. The Respondent acknowledges and agrees that its Offer and Offer Information are subject to the *Freedom of Information Act 1992* (WA) and may also be disclosed by the Principal or the State under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.

c. By submitting an Offer, the Respondent releases the Principal and the State from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting

Reference Only

from the disclosure of its Offer and Offer Information under this clause by the Principal or the State.

d. The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* (WA) *and* the *Auditor General's Act 2006* (WA) are not affected in any way by the Request.

e. Subject to this clause and to the provisions of the *Financial Management Act 2006* (WA) and the *Auditor General's Act 2006* (WA), the Principal will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in its Offer as confidential. However, the Principal may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

f. The Department of Housing and Works may collect Personal Information to assess Respondents' suitability in the evaluation of Responses and to administer and manage contractual arrangements with the successful Respondent. Personal Information may be used by authorised officers, evaluation panel members, disclosed to third-party service providers and other government agencies where required or permitted by law. Information is managed in accordance with the Privacy and Responsible Information Sharing Act 2024 (WA). For more information, please refer to the Privacy Statement at Department of Housing and Works - Privacy Statement.

Reference Only

PART B

RESPONDENT TO READ AND KEEP THIS PART

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

PART C HEAD AGREEMENT CONDITIONS

C.1. FORMATION AND TERMS OF HEAD AGREEMENT

This Part C sets out the general terms and conditions of the Head Agreement for the Panel. On the Principal issuing a Panel Letter of Appointment to a Panel Member, a **Head Agreement** between the Principal and that Panel Member comes into existence, consisting of (in descending order of precedence):

(a) the Panel Letter of Appointment;

(b) the Offer;

(c) this Part C of the Request; and

(d) the remaining provisions of the Request and the Brief.

Where any inconsistency occurs between the provisions contained in two or more of the documents that make up the Head Agreement, the document lower in the order of precedence is to, where possible, be read down to resolve the inconsistency.

If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

C.2. DEFINITIONS AND INTERPRETATIONS

C.2.1. DEFINITIONS

In the Head Agreement, unless the context otherwise requires:

Aboriginal Business refers to registered Aboriginal businesses listed at the Aboriginal Business Directory (http://www.abdwa.com.au) or at Supply Nation (http://supplynation.org.au/) and may be:

a. a sole trader, where the person is an Aboriginal Person; or

b. a partnership or firm, where at least 50% of the partners are Aboriginal Persons; or

c. a corporation, where Aboriginal Persons own at least 50% of the legal entity submitting the tender.

Aboriginal Business and Employment Tendering Preference is a preference given in circumstances described in clause C.6.5.

Aboriginal Employer means a Panel Member that employs any Aboriginal Person, including an apprentice or trainee.

Aboriginal Person means a person who is of Aboriginal descent who identifies as such and is accepted as such by the community in which he or she lives or has lived.

Annexure Part A means the Contract specific annexure prepared on behalf of the Principal that specifies the service requirements and is attached to the Letter of Acceptance, which is referenced in Schedule 2 to Part D of the Request.

Annexure Part B means the WA Government Amendments to AS 4122-2010 specified in Schedule 1 to Part D of the Request.

Brief means the Interior Fitout and Workplace Design Brief.

Reference Only

PART C

RESPONDENT TO READ AND KEEP THIS PART

Business Days has the meaning given in clause 1 of the General Conditions.

Buying Rules means the Principal's intended procurement arrangements for the Services, being at the date of the Head Agreement, those outlined in *Schedule 1 to Part C: Buying Rules*, subject to change in the Principal's discretion as notified by the Principal to the Panel Member in writing.

Buy Local Policy means the 2020 policy produced by the WA State Government including all applicable Addenda.

Client Agency means a Government agency that the Department of Housing and Works is assisting with the planning or delivery of a specific project.

Closing Time means the time and date specified on the front of the Request as the closing time for the submission of Offers, unless amended by the Principal.

Confidential Information means information in respect of the Head Agreement or a Contract that:

a. is by its nature confidential; or

b. is specified by the Principal to be confidential; or

c. the Panel Member knows or ought to know is confidential.

Consultant's Personnel has the meaning given in clause 1 of the General Conditions.

Contract has the meaning given in clause 1 of the General Conditions in relation to a contract formed with a Panel Member in accordance with clause C.3.4.

Contract Fee has the same meaning as the term 'Fee' has under the General Conditions and is stated in the Contract subject to variation in accordance with the Contract.

Feeable Value means the Perth based estimated total cost (ETC), GST exclusive, of the project, less all fees and disbursements and specific items of equipment or works that are not the direct responsibility of the consultant or any subconsultant.

General Conditions means AS 4122-2010 "General Conditions for Consultants (incorporating Amendment No. 1)" as amended by Annexure Part B.

Head Agreement has the meaning given in clause C.1.

Insolvency Event has the meaning given in clause 31 of the General Conditions.

Interior Fitout and Workplace Design Brief means the Department of Housing and Works specification for services for interior fitout and workplace design which is available from the WA Government website at https://www.wa.gov.au/government/publications/interior-fitout-and-workplace-design-services-2020-brief and which may be amended from time to time at Housing and Works discretion.

Interior Fitout and Workplace Design Services means the services set out in the Interior Fitout and Workplace Design Brief.

Invitation to Submit Proposal means an invitation issued by the Principal to a Panel Member inviting it to submit a Proposal to be awarded a Contract.

Joint Venture with Aboriginal Participation means a joint venture between any registered Aboriginal Business and a non-Aboriginal Business if at least 50% of equity in the joint venture is owned by the registered Aboriginal Business.

Reference Only

Key Personnel means, in respect of a Contract, those key personnel identified in the Contract pursuant to clause 18 of the General Conditions.

Letter of Acceptance means the letter from the Principal awarding a Contract to a Panel Member confirming the Services and the Contract Fees.

Offer means the offer submitted by the Respondent in response to the Request.

Offer Information means all information, other than the Respondent's Offer, submitted by the Respondent in response to, or in connection with, the Request.

Offer Validity Period means the period specified in clause B.4, which may be extended by the Principal in its discretion by advising each Respondent in writing.

Panel means the panel arrangement established through the Request for the provision of Interior Fitout and Workplace Design Services pursuant to the Head Agreement.

Panel Letter of Appointment means a letter issued by the Principal to a successful Respondent to the Request accepting that Respondent's Offer and appointing that Respondent to the Panel.

Panel Manager means the individual appointed to represent the Principal with respect to managing the Panel and the Head Agreement.

Panel Member means a successful Respondent who has been appointed by the Principal to the Panel and entered into a Head Agreement with the Principal for the Interior Fitout and Workplace Design Services.

Panel Member's Representative means the individual appointed as the Panel Member's representative as identified in the Panel Member's Offer or by subsequent notice to the Principal.

Panel Term has the meaning given in clause C.3.1.

Performance Report means a report prepared by the Principal on the performance of the Panel Member in respect of each Contract awarded to the Panel Member with a value (at award or by variation) at or above $50,000.

Permanent Operational Office means a bone fide principal place of business or a bone fide branch office.

Principal means the Minister for Works being the body corporate created under Section 5 of the *Public Works Act* 1902 (WA).

Project means a building or maintenance construction project in the metropolitan region that requires Interior Fitout and Workplace Design Services.

Project Manager means the individual appointed to represent the Principal for the purpose of arranging and managing a Contract, as identified in the Letter of Acceptance for the Contract or by subsequent notice to the Panel Member.

Proposal means a Panel Member's response to an Invitation to Submit Proposal detailing the Panel Member's proposed approach to undertaking the requested Services.

Public Authority means a department, agency or instrumentality of the State of Western Australian.

Records means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence,

Reference Only

documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

Request means this document BMW0531018 issued by the Department of Housing and Works on behalf of the Principal inviting Offers for the provision of Interior Fitout and Workplace Design Services under a standing offer arrangement.

Respondent means any party that submits an Offer.

Services means, in respect of:

a. the Head Agreement, the Interior Fitout and Workplace Design Services Brief and other related services the subject of the Panel; and

b. a Contract has the meaning given in clause 1.1. of the General Conditions.

Special Conditions of Contract means the conditions referred to in Part D of this Request, excluding the Schedules to Part D.

Specified Personnel means those persons nominated by the Respondent in its Offer as being "key personnel" available for Contracts. The personnel so nominated may be amended from time to time in accordance with clause C.7.4.

Subconsultant has the meaning given in the General Conditions.

Superintendent's Representative means the individual appointed in writing by the superintendent of a construction contract to act in the capacity of, and undertake specified duties for and on behalf of, the superintendent.

WAIPS means the State Government's Western Australian Industry Participation Strategy under the Western Australian Jobs Act 2017 (WA) which came into full effect on 1 October 8018 and shall apply to this Panel.

C.2.2. INTERPRETATION

Clauses 1.2 to 1.5 of the General Conditions have effect as if set out in full, with the necessary changes, in this clause C.2.2.

C.2.3. TERMS USED IN THE GENERAL CONDITIONS

The Principal and Panel Member acknowledge that:

a. the Head Agreement term 'Contract Fee' equates to the General Conditions term 'Fee';

b. the Head Agreement term 'Principal' equates to the General Conditions term 'Client'; and

c. if the Panel Member is awarded a Contract under the Head Agreement, the Panel Member is referred to in that Contract as the 'Consultant', within the meaning given in the General Conditions.

C.2.4. MONETARY VALUES

All references to monetary values in the Head Agreement are to be taken as being GST inclusive unless otherwise stated.

Reference Only

PART C

RESPONDENT TO READ AND KEEP THIS PART

C.3. PANEL OPERATION

C.3.1. HEAD AGREEMENT TERM

The Head Agreement commenced on 1 January 2020 or such other date as specified in the Panel Letter of Appointment and, subject to clause C.4, may be extended for a period by the Client under clause C.3.2 (**Panel Term)**.

C.3.2. EXTENSION BY PRINCIPAL

The Panel term has been extended to 6 November 2028.

If the Principal wishes to exercise an extension option under this clause the Principal will notify Panel Members at least 20 Business Days before the expiry of the Term advising that the Head Agreement is to be extended and the period of that extension.

C.3.3. STANDING OFFER

The Head Agreement is a standing offer from the Panel Member to the Principal for the Panel Term to provide the Services for the Contract Fee.

C.3.4. ACCESSING THE PANEL AND CONTRACT FORMATION

The Principal has absolute discretion in determining if and how it will access the Panel for proposed services. The Principal intends to follow the Buying Rules in accessing the Panel, including by:

a. if applicable, notifying one or more Panel Members to request the submission of a Proposal for the Services the subject of the proposed Contract; and

b. in the Principal's discretion, accepting a Panel Member's standing offer at any time during the Panel Term by issuing a Letter of Acceptance to the Panel Member in response to the Panel Member's Proposal.

On issuance of a Letter of Acceptance, a Contract is formed between the Principal and the Panel Member for:

c. provision of the Services;

d. for the Contract Fee;

e. in accordance with the Brief,

each as specified in, and in accordance with, the Contract including any amendments advised in the Letter of Acceptance for the Contract.

C.3.5. INELIGIBILITY FOR CONTRACTS

A Panel Member will not be eligible to be considered for a proposed Contract if:

a. the Panel Member does not, at the time of consideration for the Contract, hold insurance compliant with clause C.9 or is otherwise in breach of clause C.9 including by failing to provide evidence of such insurance; or

b. the Panel Member or its Head Agreement is, at the time of consideration for the Contract, subject to a suspension.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

C.3.6. OPERATION OF THE PANEL

The Panel Member acknowledges that:

a. the Principal may request Services from any Panel Member;

b. the Principal makes no representation that it will procure or seek to procure Services, or any particular volume of Services, from a Panel Member or through the Panel;

c. a Panel Member may not receive any Contracts during the Panel Term;

d. appointment to the Panel does not give a Panel Member an exclusive right to provide the Services to the Principal;

e. the Principal may at any time and from time to time close, cancel or terminate the Panel in accordance with clause C.4 and supersede or replace the Panel;

f. the Principal may at any time and from time to time terminate a Panel Member's Head Agreement in accordance with clause C.4;

g. the Principal may supplement the Panel at any time and from time to time, including if the Principal receives an application from a suitably qualified Aboriginal Business seeking to become a member of the Panel in accordance with Clause C.3.7; and.

h. the Principal may make unilateral changes to Head Agreements to give effect to changes in Panel arrangements in accordance with clause C.3.9.

C.3.7. ENGAGEMENT OF ABORIGINAL BUSINESSES

The Principal reserves the right to consider applications at any time from suitably qualified Aboriginal Businesses seeking to become members of the Panel. Applications made under this clause will be subject to an assessment against the evaluation criteria as outlined in the Request. If successful, the applicant will be appointed to the Panel.

C.3.8. PANEL MANAGER, PROJECT MANAGERS AND PANEL MEMBER'S REPRESENTATIVE

The Panel Member agrees and acknowledges that the Panel Manager may administer the Head Agreement on behalf of the Principal, and that the nominated Project Manager will administer the applicable Contract on behalf of the Principal.

The Principal agrees and acknowledges that the Panel Member’s Representative may administer the Head Agreement on behalf of the Panel Member.

C.3.9. VARIATION TO HEAD AGREEMENT (INCLUDING THE BRIEF)

The Principal may at any time vary a provision of the Head Agreement (including the Brief) by notice to all Panel Members specifying a date for the variation to take effect (which must not be less than 5 Business Days after the date of the letter) and, in the Principal's sole discretion, any increase to the Hourly Rates Fees Schedule and/or Percentage Fee Schedule (as applicable) to reflect the variation.

A Panel Member may by return notice:

Reference Only

a. agree to the variation in which case the variation to the Panel Member's Head Agreement takes effect from the date specified in the Principal's notice; or

b. withdraw from the Panel by issuing a letter of Panel withdrawal to the Principal, with withdrawal and termination of the Panel Member's Head Agreement to take effect on the variation date specified in the Principal's notice.

C.3.10. CPI VARIATION OF HOURLY RATES

The Panel Member's hourly rates will be fixed for the first twelve months of the Panel Term.

Panel Members will have the option to apply for the hourly rates to be adjusted in line with the Consumer Price Index, Australia, Cat No 6401.0: 1 All Groups, Index Numbers, Perth on an annual basis, one month prior to the first anniversary of the commencement date of the Panel Member's Head Agreement, and each year thereafter. If a Panel Member applies for such a CPI variation, the Principal will adjust the hourly rates under the Head Agreement as described above but such adjustment will not apply to any Contract, or Contract Fees under any Contract, existing at or prior to the effective date of the variation.

C.3.11. COLLABORATION AND JOINT VENTURES

A Panel Member may, in response to an Invitation to Submit Proposal, request approval to collaborate with another firm in an incorporated joint venture for the Contract.

The Principal reserves the right to request the joint venture agreement to be made available to the Principal for review prior to the Principal approving the joint venture. The Principal may reject a request to form a joint venture, including where:

a. the joint venture would delay the commencement of the Contract, or

b. the Principal considers that the proposed joint venture would not be beneficial to the completion of the project.

If a joint venture is approved by the Principal for a Contract, the incorporated joint venture itself is not eligible for Panel membership, unless successful in applying for Panel membership as part of any Panel refresh process to supplement the Panel as described in clause C.3.6.

C.4. HEAD AGREEMENT TERMINATION AND SUSPENSION

C.4.1. WITHDRAWAL BY PANEL MEMBER

A Panel Member may withdraw from the Panel and terminate its Head Agreement by issuing a letter of Panel withdrawal to the Principal nominating the date for withdrawal which, subject to clause C.3.9(b), must not be less than 20 Business Days from the date of the letter. The Panel Member’s Head Agreement will terminate on the date specified in the letter.

C.4.2. TERMINATION OF HEAD AGREEMENT BY PRINCIPAL

The Principal may, by notice to the Panel Member specifying the effective date of the termination, terminate the Panel Member's Head Agreement:

Reference Only

a. if in the Principal's sole opinion, the Panel Member or the Consultant's Personnel:

   (i) has received one or more Performance Reports that demonstrate unsatisfactory performance or otherwise fails to perform satisfactorily;

   (ii) breaches the requirements of the Head Agreement;

   (iii) exposes government to significant financial loss;

   (iv) engages in unprofessional conduct or unconscionable dealings;

   (v) makes negative comments about the Principal or its agents to other parties;

   (vi) fails to provide information or reports to the Principal, or otherwise keep the Principal informed, as required by the Head Agreement;

   (vii) fails to meet the agreed timelines as established for any Contract;

   (viii) unreasonably declines Contracts or Invitations to Submit Proposals;

   (ix) is the subject of unsatisfactory performance reports issued by other Public Authorities; or

   (x) fails to comply with any payment obligations under the law or under any contract between the Panel Member and its Subconsultants or suppliers in respect of the carrying out of any work awarded under this Panel arrangement;

b. in the event that the Panel Member is subject to an Insolvency Event (except to the extent that the right to terminate is stayed by operation of section 415D, 434J or 451E of the *Corporations Act 2001* (Cth));

c. if a change in Specified Personnel results in the Panel Member no longer meeting the pre-qualification requirements specified in clause C.7.4,

d. if a change in Specified Personnel results in the Principal forming a view, in its sole and absolute discretion, that the Panel Member will not have sufficient capacity to discharge its obligations under the Head Agreement or any Contract;

e. if the Head Agreement otherwise provides for the Principal to terminate the Head Agreement or cancel the Panel Member's Panel membership; or

f. at any time, in the Principal's absolute discretion, for the Principal's convenience.

C.4.3. PANEL MEMBER SUSPENSION BY PRINCIPAL

If:

a. the Principal has the right to terminate a Panel Member's Head Agreement, or

b. a suspension is contemplated by the Department of Housing and Works Supplier Demerit Scheme,

the Principal may (in its absolute discretion) suspend the Panel Member's Head Agreement by notice to the Panel Member (except to the extent the right to suspend is stayed by operation of section 415D, 434J or 451E of the *Corporations Act 2001* (Cth)), without limiting its rights to terminate the Head Agreement.

Reference Only

The Principal will notify the Panel Member if the suspension no longer applies.

C.4.4. PANEL CLOSURE OR SUSPENSION

The Principal may, in its absolute discretion at any time:

a. close the Panel and terminate all Head Agreements by notice to all Panel Members specifying the date of Panel closure; or

b. suspend the Panel and all Head Agreements by notice to all Panel Members specifying the date of Panel suspension. The Principal will notify all Panel Members if the suspension no longer applies.

C.4.5. EFFECT OF EXPIRATION OR TERMINATION OF THE HEAD AGREEMENT

If the Head Agreement is terminated or expires:

a. unless the Head Agreement otherwise provides, the expiration or termination does not affect any rights, liabilities or obligations of the Principal or Panel Member which may have accrued before the date of termination;

b. the expiration or termination will not affect any existing Contracts, which will continue between the Principal and Panel Member on its terms;

c. the Panel Member may not enter into any new Contracts after the date of expiration or termination;

d. the Panel Member will return any Records and information as required by the Principal; and

c. the Panel Member will not be entitled to any compensation for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of the Head Agreement.

The expiration or termination of a Contract does not affect the Panel Member's Head Agreement.

C.5. CHANGE IN CONTROL, ASSIGNMENT AND NOVATION

a. A Change in Control must not occur without the prior approval of the Principal, and must, if approved by the Principal, be on such terms and conditions as determined by the Principal.

b. The Panel Member must not, without the Principal’s prior written consent, and except on such terms and conditions as are determined by the Principal (including as to treatment of existing Contracts), sell, transfer, assign, novate, mortgage, charge or otherwise dispose of, encumber or deal with the Head Agreement or any of its rights or obligations under the Head Agreement.

c. The Panel Member must give the Principal at least two months' prior notice of any proposed Change in Control, sale, transfer, assignment, novation, mortgage, charge, encumbrance or dealing contemplated by this clause.

In this clause C.5, ***Change in Control*** means, in respect of the Panel Member:

d. a change in the person or persons who, directly or indirectly, ultimately control (within the meaning of "control" given in the *Corporations Act 2001* (Cth)) the

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Panel Member (other than as a result of any dealing in securities listed on a recognised stock exchange); or

e. a material change to the Panel Member's structure, shareholding, membership, governance or control (including any changes to trustees or trust arrangements) which in the opinion of the Principal will affect the manner in which the Panel Member (or the ability of the Panel Member to) perform the Head Agreement or any Contract.

C.6. CONTRACT FEES

C.6.1. OVERVIEW

No fees or disbursements are payable to a Panel Member under or in connection with the Head Agreement.

The Panel Member agrees to provide the Services at the hourly rates and other rates and fees as specified in the Invitation to Submit Proposal and confirmed in the Letter of Acceptance.

The Contract Fee for a Contract will generally be calculated as described below:

a. where the Contract Fee is valued at less than $250,000 and is to be based on hourly rates:
    i. a ‘not to exceed’ figure will be calculated and applied to an agreed estimate of the hours that are required to complete the Services.

b. where the Contract Fee is to be fixed and is expected to be valued:
    i. at less than $250,000, the Contract Fee is to be based on the submitted Percentage Fee Schedule.
    ii. at between $250,000 and $1,000,000, the Contract Fee is to be based on the Panel Member’s Proposal submitted in response to a competitive process.

The Contract Fee shall cover all the Services to be provided by the Panel Member, including all site visits and preparation of deliverables identified in the Brief and the Letter of Acceptance.

C.6.2. CALCULATION OF PERCENTAGE FEE SCALES

The Percentage Fee Schedule submitted by the Respondent will allow a fee to be calculated for conventional and complex projects.

The fee will be allocated to specific project phases as shown in the following table.

SERVICE STAGE	COMPONENT OF CONTRACT FEE (%)
Brief signoff (including site investigation) and Schematic Design	**20%**
Design Development	**15%**

Reference Only

Contract Documentation up to and including tender award	**35%**
Contract Administration up to and including Practical Completion	**20%**
Provision of As Constructed Drawings and Operational Manuals	**5%**
Contract Administration from Practical Completion up to and including Final Completion	**5%**
SUBTOTALS	**100%**

Where a Contract does not involve a particular service stage, the Contract Fee is adjusted by the corresponding amount and the payment per service stage recalculated proportionally, i.e. the Contract Fee is reduced, and the relevant percentage is redistributed across the stages.

Where the Panel Member does not undertake the role of Superintendent's Representative, the contract administration element of the Contract Fee is reduced by 25%.

C.6.3. DETERMINING PROJECT COMPLEXITY

The Percentage Fee Schedule submitted must provide for conventional and complex projects as described in the Department's 'Project Complexity Classification Guide' available at https://www.wa.gov.au/government/publications/project-complexity-and-classification-guide-department-of-finance.

C.6.4. DISBURSEMENTS

The Contract will identify the disbursements the Consultant is entitled to under the Contract, and disbursements will be managed in accordance with the General Conditions.

Unless otherwise specified in the Contract, no disbursements will be payable for Contracts involving a Contract delivery point within the Perth metropolitan area.

C.6.5. PRICE PREFERENCES

Regional Price Preferences

Regional price preferences are not applicable to Proposals as the Panel only applies to metropolitan projects.

Aboriginal Business and Employment Tendering Preference

In respect of Invitations to Submit Proposals that are subject to a competitive process, the Principal may ask Panel Members to provide information on their status as an Aboriginal Business, an Aboriginal Employer, a Joint Venture with Aboriginal Participation or an Aboriginal Person.

Reference Only

This information will be used to allocate an Aboriginal Business and Employment Tendering Preference, which will reduce, for evaluation purposes, the proposed Contract Fee by 10% of the preference amount up to a maximum of $250,000.

The Aboriginal Business and Employment Tendering Preference will not apply in instances where Proposals are sought from Panel Members that are located interstate or in New Zealand.

Verification of Claims for Preferences and Sanctions

The Principal reserves the right to request from the Panel Member evidence to the satisfaction of the Principal to verify the validity of the Panel Member's claim for any financial preference. When a Panel Member is unable to provide evidence to the satisfaction of the Principal that verifies the validity of the Panel Member's claim for a preference, then the Panel Member's claim for that preference may be considered invalid and the preference may not be applied to the Proposal.

If, in carrying out the Contract, the Panel Member fails to deliver on any of the undertakings made in order to gain the financial preference, the Principal may, at its discretion:

a. recover from the Panel Member the whole or any part of the difference between the Panel Member's Proposal and the amount of the lowest conforming Proposal (if applicable);

b. terminate the Contract;

c. suspend or cancel the Panel Member's membership of the Panel; or

d. take action under the Department of Housing and Works Supplier Demerit Scheme.

C.7. PANEL MEMBER OBLIGATIONS

C.7.1. PERMANENT OPERATIONAL OFFICE

The Panel Member must:

a. maintain a Permanent Operational Office for the Panel Term;

b. immediately notify the Principal of any change to the details of its Permanent Operational Office as last notified to the Principal; and

c. on request from the Principal, demonstrate the bona fides of the Panel Member's Permanent Operational Office. The Principal will determine whether the office meets the requirements of clause C.7.1a and may take into consideration matters including whether the office:

(i) is a permanent fixed establishment (not a post office box or temporary facility such as a site office or caravan);

(ii) has been operational and active in the local building and construction industry for a period of not less than six (6) months;

(iii) will remain operational and active in the local building and construction industry after the expiration of Panel;

(iv) has established communication facilities and not only mobile phones;

Reference Only

(v) is resourced by a person or persons who are a permanent employee(s) of the Panel Member (not contract staff) and who have relevant qualifications and experience; and

(vi) is marketed by the Panel Member by way of corporate publications (letterheads), website etc.

C.7.2. ENGAGEMENT OF SUBCONSULTANTS

If the Panel Member receives an Invitation to Submit Proposal and proposes to subcontract any element of the proposed Contract to a Subconsultant, the Panel Member must:

a. include that information in the Panel Member's Proposal to inform the Project Manager of that intention;

b. demonstrate that the selection process used to select the Subconsultant has delivered a value for money outcome, including by:

(i) consulting with the Project Manager and seeking advice on the selection process to ensure that the selection process complies with Government policies.

(ii) the proposed Subconsultant may or may not be another Panel Member. Where an existing professional consultancy panel arrangement is in place (e.g. engineers, building surveyors etc.), the Panel Member is strongly encouraged to utilise the panel arrangements to directly engage Subconsultants.

(iii) if the Panel Member engages a Subconsultant outside the panel arrangements, sufficient quotes must be obtained to demonstrate that a value-for-money outcome has been achieved, with at least one quote obtained directly from the relevant panel arrangement.

The Project Manager will assess any proposal to subcontract on its merits and may request additional information from the Panel Member as part of the assessment or impose conditions on the engagement of the Subconsultant.

If the Project Manager does not object to the engagement of a Subconsultant, the Panel Member must:

a. engage the Subconsultant under terms and conditions consistent with, and complementary to, the Contract under which the Panel Member is engaged, and any conditions imposed by the Principal; and

b. not change or allow any Subconsultant to change any member of its project team that formed part of the firm's Proposal without prior written approval of the Principal.

Engagement of a Subconsultant does not affect the Panel Member's obligations to the Principal under the Panel or any Contract. The Consultant is required to inform all Subconsultants that the relationship between the Consultant and the Subconsultant, as evidenced by a contract or otherwise, does not impose on the Principal any express or implied legal obligation to the Subconsultant of any nature whatsoever in contract or by any other means.

Reference Only

Panel Members must comply with all payment obligations under the law and under contract between the Panel Member and its Subconsultants and suppliers in respect of the carrying out of any work awarded under this Panel.

C.7.3. INFORMATION TO PANEL MANAGER

The Panel Member:

a. should ensure that the information held by the Principal on the Panel Member (including capabilities, specified personnel, insurances and Permanent Operational Office location) is accurate and up to date; and

b. must, on request from the Principal (acting reasonably) provide reports on Contracts awarded, underway or complete, or attend meetings, information sessions or workshops to address matters related to the Panel and the Services.

C.7.4. SPECIFIED PERSONNEL

The Panel Member must:

a. ensure that all Specified Personnel are available to be nominated as Key Personnel to undertake individual Contracts;

b. for each Contract, propose Key Personnel who are Specified Personnel and offer Specified Personnel as part of the team proposed for each Contract;

c. notify the Panel Manager within 10 Business Days of a change in status of its Specified Personnel; and

d. if the Panel Member proposes a new individual as Specified Personnel, provide the same level of information in respect of that individual as required in the Request.

A new person nominated to become Specified Personnel will only be Specified Personnel on acceptance of that person by the Principal.

C.7.5. QUALITY OF SERVICES AND COMPETENCY OF SPECIFIED PERSONNEL

The Panel Member must:

a. ensure that its systems, processes and procedures used to source, screen, test and hire personnel that will undertake work for the Principal are robust and of a high standard;

b. ensure that all Consultant's Personnel undertaking work for the Principal are appropriately qualified, skilled and experienced for the work and the relevant Service; and

c. manage the performance of all Consultant's Personnel providing services to the Principal.

C.7.6. POLICE AND OTHER CLEARANCES FOR PANEL MEMBERS

Special Condition of Contract D.2.10 has effect as if set out in full, with references to "the Client" read as references to the "Panel Member" and with other necessary changes, in this clause C.7.6.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

C.8. PERFORMANCE MANAGEMENT

C.8.1. COMPLETION OF PERFORMANCE REPORTS

A Performance Report will generally be completed by the Project Manager at:

a. Contract completion; and

b. where applicable, at the time of contract award of the construction contract to which the Services relate (where this occurs the Performance Report will be reviewed at Contract completion and may be amended),

and may be completed or updated at any time during a Contract at the Principal's discretion.

In completing the Performance Report the Project Manager may obtain input from other stakeholders impacted by the Contract, including the Client Agency and the Superintendent's Representative (where the Panel Member has not undertaken that role).

The Panel Member will have 10 Business Days from receipt of the Performance Report to provide comments to the Principal prior to its finalisation and the Principal will finalise the Performance Report following consideration of any Panel Member comments received within the above timeframe.

Finalised Performance Reports will be made available to all Department of Housing and Works staff and may be distributed to Client Agencies and other Government agencies.

C.8.2. USE OF PERFORMANCE REPORTS

Performance Reports may be used by the Principal:

a. as part of the Principal's on-going performance management of Panel Members, including the purpose described in clause C.8.1;

b. as part of the Principal's Panel Member selection process described in the Buying Rules;

c. as part of any refresh of the Panel by the Principal; or

d. as part of an assessment of the Panel Member that may be done as part of a procurement process undertaken outside the Panel.

C.8.3. SUPPLIER DEMERIT SCHEME

The Panel Member is subject to the Department of Housing and Works Supplier Demerit Scheme. Details of the scheme are available on the WA Government website at https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects

The Supplier Demerit Scheme is in addition to any other form of performance management covered in the Request.

Reference Only

PART C

RESPONDENT TO READ AND KEEP THIS PART

C.9. INSURANCE

C.9.1. REQUIREMENTS

The Panel Member must take out and maintain the following minimum level of insurances:

a. public liability insurance for a minimum $10,000,000;

b. professional indemnity insurance for a minimum $5,000,000; and

c. workers' compensation insurance as required by law,

for the Panel Term and:

a. in respect of professional indemnity insurance, for a period of 6 years after the later of the end of the Panel Term and the latest date of expiration or termination of a Contract; and

b. if any Contracts under the Head Agreement continue past the Panel Term, until the latest expiry or termination date of such Contracts.

Nothing in this Head Agreement impacts the Panel Member's obligation to obtain and maintain a higher level of insurance in accordance with any Contract, which will be discussed with the Panel Member at the time of its Proposal.

C.9.2. EVIDENCE OF INSURANCE

The Panel Member must provide the Panel Manager with sufficient evidence that the Panel Member holds the insurances as required under clause C.9.1. The Panel Manager or Project Manager may at any time request the Panel Member to provide a certificate of currency of insurance or a copy of any policy.

C.9.3. NO LIMITATION OF OTHER LIABILITIES

Nothing in clause C.9 limits the Panel Member's other liabilities under the Head Agreement or any Contract or restricts the Panel Member from insuring for sums or risks greater than those required under the Head Agreement or any Contract.

C.10. RECORDS, ACCESS AND INFORMATION

C.10.1. RECORDS

The Panel Member must keep accurate, complete and current written Records in respect of the Contracts including:

a. the type of Services, including the separate Contracts, supplied to the Principal during the Term;

b. the time that the Panel Member spent providing the Services during the Term; and

c. the name and title of all Key Personnel and Subconsultants who provided the Services and were responsible for supervising the provision of the Services.

The Panel Member must comply with the directions of the Principal in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term

Reference Only

The Panel Member must retain all original documents and Contract records (including physical and electronic records) directly or indirectly connected with the Head Agreement or Contract for a period of seven years after the expiry or termination of the Head Agreement and any Contract.

C.10.2. ACCESS TO PREMISES AND RECORDS

Special Condition of Contract D.2.9 has the effect as if set out in full, with the necessary changes, in this clause C.10.2.

C.10.3. DISCLOSURE AND PUBLICATION OF INFORMATION

The Panel Member agrees and acknowledges that any information or further information submitted as part of the Head Agreement or any Contract, is subject to the *Freedom of Information Act 1992* (WA) and may also be disclosed by the Principal under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.

The Panel Member agrees and acknowledges that the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* (WA) are not limited or affected in any way by the Head Agreement or Contract.

The Panel Member also agrees to allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Panel Member's Records concerning the Head Agreement and any Contract.

The Principal reserves the right to publish, or provide directly to third parties:

a. information on which suppliers are members of the Panel;
b. capability statement's provided by Panel Members; and
c. summarised performance management information.

The contract award information for all Contracts valued at $50,000 (GST inclusive) and above will be published on the Tenders WA website after the Contract is awarded.

C.10.4. PUBLICITY

Unless:

a. the Principal gives its prior written consent; or;
b. the Panel Member is required to do so by law

the Panel Member must not:

a. use a Contract or Head Agreement, or the Principal or the Client Agency's name or logo; or
b. use the name or logo of any Public Authority specified in a Contract or Head Agreement for the purposes of this clause; or
c. refer to the Panel Member's association with the State of Western Australia or the Government of Western Australia which results from a Contract or Head Agreement; or
d. make any statement concerning a Contract or Head Agreement, in any publication, advertisement or media release.

Reference Only

The Principal or the Client Agency may use a Contract and the Panel Member's name and logo for reasonable promotional or publicity purposes at their discretion, but where this is done then the Panel Member's role will be acknowledged to the extent that is reasonable in the circumstances.

C.10.5. INTELLECTUAL PROPERTY

a. A Proposal is, on submission, the absolute property of the Principal and will not be returned to the Panel Member. Subject to paragraph b, nothing in this clause affects the Intellectual Property Rights of the Respondent in the Proposal, except that the Principal may make such copies of the Proposal as required to evaluate the Proposal.

b. If the Proposal results in a Contract, clause 21 of the Contract will apply to the Proposal from the date of the Contract.

C.10.6. APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause C.10.6.:

Government Agency means any Australian government or any governmental, semi-governmental, administrative, regulatory, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency, entity or Parliament**.**

Personal Information has the meaning given to it in the PRIS Act.

PRIS Act means the *Privacy and Responsible Sharing of Information Act* 2024 (WA).

Privacy Act means the *Privacy Act* 1988 (Cth).

Privacy Commissioner means the Australian Information Commissioner, the Information Commissioner and the Privacy Deputy Commissioner (as each of those terms is defined in the PRIS Act), and (upon commencement of the relevant provision) any other authority to whom a privacy complaint is referred in accordance with section 93 of the PRIS Act.

(a) The Consultant must:

i. comply with its obligations (if any) under or arising pursuant to the Privacy Act;

ii. whether or not the Consultant is an organisation which is bound by the Privacy Act or other privacy laws, comply with the Australian Privacy Principles set out in the Privacy Act as if it were required to comply with that legislation;

iii. facilitate the Principal's compliance with their obligations under the PRIS Act, including providing assistance as requested by the Principal; and

iv. not do or omit to do anything that is likely to cause the Principal or their respective officers, employees or agents to contravene the PRIS Act,

to the extent relevant to the Head Agreement.

v. The Consultant also agrees to comply with:

(A) such other Commonwealth, State or Territory legislation related to privacy;

(B) any directions made by a Privacy Commissioner;

(C) any reasonable policies, procedures and guidelines of the Principal relating to privacy; and

(D) any other reasonable direction relating to privacy which is given by the

Reference Only

Principal.

(b) Without limiting the Consultant's obligations under clause C.10.6(a), the Consultant must, in relation to any Personal Information which it collects, holds, uses, has access to, or otherwise deals with in the course of performing its obligations under, or otherwise in connection with the Head Agreement:

i. take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure; and

ii. where any breach of privacy occurs due to the Consultant's failure to comply with any obligation under this clause C.10.6, do all things necessary to mitigate the consequences of that breach;

iii. not modify or disclose the Personal Information except with the Principal's prior written approval; and

iv. ensure that the Personal Information is returned to the Principal (or is permanently destroyed if the Principal so elects) when it is no longer required for the performance of the Consultant's obligations under the Head Agreement.

(c) The Consultant must immediately notify the Principal (providing full details) if it:

i. becomes aware of any suspected or actual misuse of, or any unauthorised access to or disclosure of, Personal Information held by the Consultant or the Consultant Personnel;

ii. receives, or otherwise becomes aware of, any complaints concerning its or the Principal's compliance with privacy obligations, including full details of how the Consultant intends to resolve the complaint;

iii. becomes aware that a disclosure of Personal Information may be required by law; or

iv. is approached with respect to privacy by any Government Agency or by any individual to whom any Personal Information relates.

(d) The Consultant must co-operate fully with the Principal to resolve:

i. any request, inquiry or notice from a Government Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or

ii. any complaint alleging a breach by any party of their respective privacy obligations in connection with,

the Head Agreement.

(e) Nothing in this clause C.10.6 is intended to limit any obligation of the Consultant under the PRIS Act or the Privacy Act (if applicable) with respect to Personal Information.

(f) This clause C.10.6 survives the termination or expiry of the Head Agreement.

C.11. CONFLICT OF INTEREST OF PANEL MEMBERS

Panel Members must not place themselves in a position which will or may give rise to an actual, potential or perceived conflict of interest during the Panel Term.

Panel Members must notify the Principal promptly in writing upon becoming aware of any actual, potential or perceived circumstances, arrangements or understandings

Reference Only

which constitute, or which may reasonably be considered to constitute, an actual, potential or perceived conflict of interest with the Panel Member's obligations under the Head Agreement or a Contract, and of any change in the conflict of interest declaration made in its Offer or subsequently.

The Principal will assess any actual, potential or perceived conflict of interest and may:

a. suspend or cancel the Panel Member's membership of the Panel;

b. direct the Panel Member to take a particular action to address the actual, potential or perceived conflict of interest; or

c. determine no further action is necessary.

The Principal may request further information from the Panel Member, including details of any proposed strategy for managing any actual, potential or perceived conflicts of interest, as part of the assessment process.

In the event that a Panel Member fails to disclose an actual, potential or perceived conflict of interest, or if the Panel Member is unable or unwilling to comply with the Principal's direction with respect to addressing a conflict of interest, the Principal may suspend or cancel the Panel Member membership of the Panel.

C.12. GENERAL

C.12.1. NOTICES

Each notice or other communication given under the Head Agreement:

a. must be in writing and sent by the party making it or on that party's behalf by its authorised officer or solicitor;

b. must be hand delivered or sent by prepaid post or by email to the address or email address of the recipient (as applicable) specified in the Panel Letter of Appointment or as subsequently notified by that party;

c. subject to clause C.12.1d, is taken to be received:

   i. in the case of hand delivery, on the date of delivery;

   ii. in the case of post, on the third Business Day after posting; and

   iii. in the case of email, when it becomes capable of being retrieved by the addressee at the relevant email address; and

d. if the notice is received after 5.00 pm or on a day other than a Business Day, it is taken to be received at 9:00am on the next Business Day.

C.12.2. DISPUTE RESOLUTION

Clause 32 of the General Conditions has effect as if set out in full, with the necessary changes, in this clause C.12.2.

C.12.3. SURVIVAL OF TERMINATION

All provisions of the Head Agreement which expressly or by implication from their nature are intended to survive termination, completion or expiration of the Head Agreement survive such expiration, completion or termination, including this clause and:

Reference Only

a. clause C.4.5 - Expiration or Termination of the Head Agreement or Contract;

b. clause C.9 – Insurance;

c. clause C.10 – Records, Access and Disclosure and Publication of Information;

d. clause C.12.2 - Dispute Resolution; and

e. any other provision which relates to or is in connection with the Principal's rights to set off or recover money, confidentiality or privacy, intellectual property rights, any indemnity or other financial security or any right or obligations arising on expiry or termination of the Head Agreement.

C.12.4. GOVERNING LAW

Clause 35 of the General Conditions has effect as if set out in full, with the necessary changes, in this clause C.12.4, with the State of Western Australia specified.

C.12.5. NOTICE OF CLAIMS MADE AGAINST THE PANEL MEMBER

Panel Members are required to notify the Panel Manager, in writing, within five (5) Business Days of receipt of any claim or potential claim made against the Panel Member, including insurance and legal claims, which arise wholly or in part as a result of the Panel Member's membership of the Panel, or which have the potential to affect the Panel Member's ability to perform the obligations of the Head Agreement or any Contract.

C.12.6. NO CLAIM

To the extent permitted by law, Panel Members will have no claim against the Principal arising from or in connection with the exercise or failure to exercise the Principal's rights under the Head Agreement.

C.12.7. DISCRETION

Where under the Head Agreement the Principal has a right, power, discretion or other function (including to accept, agree, approve, comment on or reject any matter), the Principal will be entitled to exercise that right, power, discretion or other function in its absolute discretion, unless the content otherwise expressly provides.

C.12.8. CONSENT

Whenever the consent of the Principal is required under the Head Agreement or any Contract:

a. that consent may be given or withheld by the Principal in the Principal's absolute discretion and may be given subject to such conditions as the Principal may determine;

b. the Principal is not required to provide a reason or reasons for giving or refusing its consent; and

c. the Panel Member agrees that any failure by it to comply with or perform a condition imposed by Principal under this clause may lead to the Panel Member's membership of the Panel being suspended or cancelled.

Reference Only

C.12.9. WAIVER

Any waiver by the Principal or the Panel Member must be in writing and signed by the party waiving the right.

Any waiver by the Principal or the Panel Member does not affect its rights in respect of any other breach of the Head Agreement as the case may be by another party.

Subject to this clause, any failure by the Principal or the Panel Member to enforce any right under the Head Agreement as the case may be will not be construed as a waiver of their respective rights under the Head Agreement.

C.12.10. ENTIRE AGREEMENT

The Head Agreement supersedes all prior negotiations, understandings and agreements between the Principal and the Panel Member relating to the matters covered by the Head Agreement and constitute the full and complete agreement between the Principal and the Panel Member relating to the matters covered by the Head Agreement.

C.12.11. RIGHTS ARE CUMULATIVE

Unless otherwise stated the rights, powers and remedies in the Head Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

C.12.12. FURTHER ASSURANCE

The Principal and the Panel Member must do everything reasonably necessary, including signing further documents, to give full effect to the Head Agreement and any Contract.

C.12.13. RIGHT OF SET OFF

The Principal may set off or deduct any amount claimed by the Principal from any amount owing by the Principal to the Panel Member on any account under the Head Agreement or any Contract or on any other contract between the Panel Member and the Principal.

C.12.14. COSTS

Unless otherwise stated, the Panel Member must comply with all obligations of the Panel Member at the Panel Member's cost.

The Principal and the Panel Member must pay their own legal and other costs in connection with the preparation and signing of the Head Agreement and any Contract.

C.12.15. TRUSTS

If the Panel Member has entered, or will enter the Head Agreement or Contract, in the capacity of trustee whether or not the Principal has any notice of the trust, the Panel Member:

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

a. is taken to enter into the Head Agreement and the Contract and both as trustee and in the Panel Member's personal capacity and acknowledges that the Panel Member is personally liable for the performance of the Panel Member's obligations under Head Agreement and the Contract;

b. will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Principal for any default by the Panel Member;

c. will provide a copy of the trust deed to the Principal on request;

d. warrants that:

i. the Panel Member has a right to be fully indemnified out of the asset of the trust in respect of obligations incurred under the Head Agreement and the Contract;

ii. the assets of the trust are sufficient to satisfy the right of indemnity referred to above and all other obligations in respect of which the Panel Member has a right to be indemnified out of those assets; and

iii. the Panel Member has the power and authority under the terms of the trust to enter into the Head Agreement and the Contract.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 1 TO PART C: BUYING RULES

1. CONSULTANT SELECTION AND ENGAGEMENT PROCESS

The Principal reserves the right to place Contracts with Panel Members, or contracts for services which may form part of the Services with consultants from outside the Panel, in whatever way the Principal considers appropriate in the circumstances.

If the Principal requires services from the Interior Fitout and Workplace Design Services Brief, the Project Manager will:

a. consider the scope and nature of services required to enable an estimate of the Perth based project Feeable Value or hours required, and the estimated Contract Fee; and

b. determine the process for placing the Contract, which will be based on the expected Contract Fee in accordance with section 1A or section 1B.

1A. Contracts expected to have a Contract Fee of less than $250,000

Where the Contract is expected to have a Contract Fee of less than $250,000 the following process will apply:

a. Evaluate the information held by the Principal on Panel Members and select the Panel Member that the Project Manager believes best meets the Principal's needs. Information that may be considered includes:

i. the requirements of the Contract;

ii. the assessment that was undertaken of the Panel Member as part of the formation of the Panel;

iii. the Panel Member's organisational and Specified Personnel capabilities and experience, relative to the requirements;

iv. the Panel Member's current work load or commitments;

v. the Panel Member's past performance;

vi. stakeholder requirements;

vii. the Percentage Fee Schedule or the Hourly Rates Fee Schedule, and

viii. Aboriginal Business and Employment considerations, where applicable.

b. Once the preferred Panel Member is identified:

i. The Project Manager will prepare and release to the Panel Member an Invitation to Submit Proposal. Included with the invitation:

A. where the Services align with the Brief, may be a modified and marked up version of the Brief to describe the specific requirements for the Contract and the Contract Fee that has been derived from the Percentage Fee Schedule; or

B. where the Services do not align with the Brief, will be a description of the Services that are required to be provided.

ii. In response to the Invitation to Submit Proposal the Panel Member will submit a Proposal which will be considered by the Project Manager. The Proposal

Reference Only

must, amongst other things, confirm the Specified Personnel available and, if the Services do not align with the Brief, their hourly rates (based on those included in the Panel Letter of Appointment) and provide an estimate of the hours required to provide the Services; and

iii. A Letter of Acceptance will be issued by the Project Manager establishing the Contract based on the Proposal. If the Services do not align with the Brief, the Contract Fee will be established as a 'not to exceed' figure, derived from the hourly rates and estimated hours.

The Project Manager may liaise and negotiate with the Panel Member as necessary during this process.

c. Notwithstanding the above process:

i. the Principal may place the Contract in another way that the Principal considers appropriate; and

ii. the Project Manager may choose to conduct a competitive process as described in section 1B.

1B. Contracts expected to have a Contract Fee between $250,000 and $1,000,000

Where the Contract is expected to have a Contract Fee of between $250,000 and $1,000,000 the following process will apply:

a. Assess the requirements and determine how many Panel Members should be invited to submit a Proposal. The number selected will be sufficient to ensure value for money is achieved (in general between two and five Panel Members would be invited to submit a Proposal).

b. Evaluate the information held by the Principal on Panel Members and select the Panel Members that the Project Manager believes best meets the Principal's needs. Information that may be considered includes the information set out in in section 1A(a)(i) to (viii) above):

c. Once the preferred Panel Members are identified:

i. The Project Manager will prepare and release through Tenders WA an Invitation to Submit Proposal to the Panel Members. Included with the invitation may be a modified and marked up version of the Brief to describe the specific requirements for the Contract and a description of the competitive process and the evaluation criteria that will be used to select the preferred Panel Member.

ii. In response to the Invitation to Submit Proposal the Panel Members will submit a Proposal. The Proposal must, amongst other things, confirm the Specified Personnel available and provide a proposed Contract Fee.

iii. The Project Manager will assess the Proposals and identify the Proposal that represents best value for money, considering the factors set out in B.7. When the estimated Contract Fee is expected to exceed $500,000, an evaluation panel will be formed to assess the Proposals.

iv. A Letter of Acceptance will be issued by the Project Manager establishing the Contract based on the selected Proposal.

The Project Manager may liaise and negotiate with the Panel Members as necessary during this process

Reference Only

Notwithstanding the above process, the Principal may place the Contract in another way that the Principal considers appropriate.

2. LETTER OF ACCEPTANCE

The Letter of Acceptance will be a template form that the Principal may amend from time to time. It will contain information related to the Contract awarded to the Panel Member and may include the following:

a. Specified Personnel (confirmation of nomination, availability and contact information);

b. Services to be provided;

c. schedule of deliverables;

d. agreed timelines;

e. Contract Fee and disbursement arrangements (if applicable);

f. any special terms and conditions;

g. any allowances in addition to those covered within a fees schedule, and

h. a completed Annexure Part A.

3. ABORIGINAL BUSINESSES AND PERSONS

Panel Members that are an Aboriginal Business, subcontract with an Aboriginal Business or employ one or more Aboriginal Persons may be given a non-price preference when the Project Manager is identifying a preferred Panel Member. Where a competitive process is used within the Panel, an Aboriginal Business and Employment Tendering Preference may apply (Refer clause C.6.5).

4. INVESTIGATIONS

For Contracts lacking project scope definition, the Project Manager may select a Panel Member to undertake investigative work, on an hourly rates basis to determine the scope of a Contract. Such Services will be under a separate Contract.

Reference Only

PART D CONDITIONS OF CONTRACT

D.1. CONDITIONS OF CONTRACT

Each contract formed with the Panel Member in accordance with clause C.3.4 is a **Contract** having the meaning given in clause 1.1 of the General Conditions.

A copy of the proforma Annexure Part A that will be completed for each Contract and included in the Letter of Acceptance is provided in *Schedule 2 to Part D: Annexure to General Conditions of Contract*.

D.2. SPECIAL CONDITIONS OF CONTRACT

D.2.1. DEFINITIONS

Any terms defined in clause C.1 of the Head Agreement and not defined in the Contract, including the terms the Department of Housing and Works, General Conditions, Head Agreement, Letter of Acceptance, Records and Special Conditions of Contract, have the corresponding meaning in the Contract unless the intention is clearly and unambiguously to the contrary.

D.2.2. PERFORMANCE REPORTS

If the Fee (as varied) is equal to or exceeds $50,000, the Contract will be subject to a formal performance management scheme and reporting in accordance with clause C.8 of the Head Agreement.

The Consultant is also subject to the Department of Housing and Works Supplier Demerit Scheme. Details of the scheme are available on the WA Government website at https://www.wa.gov.au/government/multi-step-guides/supplying-works-related-services/supplier-performance-management-government-non-residential-building-projects

D.2.3. CIVIL LIABILITY ACT 2002 (WA)

a. Subject to sub-clause (b), and notwithstanding any other provision of this Contract, the operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities (including negligence) arising out of or in connection with the Contract or the performance of the Services.

b. Sub-clause (a) only applies in relation to the Services performed or subcontracted by the Consultant under the Contract (as may be amended from time to time), and does not extend to other contracts entered into by the Client for which the Services may be required, such that should the Client engage a builder (or other third party) to construct a building or provide goods or Services in addition to the Services the subject of this Contract, then as between the Consultant and any such builder (or third party), then Part 1F of the *Civil Liability Act 2002* (WA) is not excluded.

The Consultant must ensure that all insurance policies required by the Head Agreement and the Contract which cover third party liability:

Reference Only

c. cover the Consultant for potential liability to the Client assumed by reason of the exclusion of Part 1F; and

d. do not exclude cover for any potential liability the Consultant may have to the Client under or by reason of the Head Agreement or Contract.

D.2.4. ACCESS TO PRINCIPAL AND CLIENT AGENCY PREMISES

The Client will provide the Consultant with access to the Client's and Client Agency's premises as specified in the Contract to enable the Consultant to fulfil its obligations under the Contract.

Access to designated premises may be temporarily denied by the Client, at its sole discretion.

Where access to designated premises is temporarily denied by the Client and not related to poor performance or misconduct of the Consultant, the Consultant will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access.

Without limiting the foregoing, the Client will, following a temporary denial of access, permit a resumption of access as soon as practicable.

The Consultant must comply with all reasonable directions and procedures of the Client and the occupier of the premises relating to occupational health, safety, security and confidentiality.

D.2.5. CONFIDENTIALITY

When engaged to provide Services, Consultants must keep confidential all information provided by the Client. In addition to the Confidentiality requirements stated in clause 23 of the General Conditions, Consultants must also not use or disclose to any person the Client's Confidential Information except:

a. where necessary to co-operate with other consultants engaged by the Client;

b. as required by any judicial or parliamentary body or governmental agency; and

c. when required (and only to the extent required) to the firm's professional advisers. Consultants must ensure that such professional advisers are bound by the confidentiality obligations imposed on Consultants under the Contract and the Head Agreement.

Clause C.10.3 has the effect as if set out in full, with the necessary changes, in this clause D.2.5.

D.2.6. CONSULTANT DECLARATIONS

The Consultant acknowledges that:

a. at the time of award of the Contract and prior to the commencement of their work under the Contract, the Consultant shall be required to complete and sign a Consultant Probity Declaration; and

b. without limiting the Consultant's obligations under the Contract, the Consultant must when directed by the Client make any additional written declarations required by the Client to confirm the Consultant's:

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i. understanding and commitment to adhere to any government and departmental policies, practices and procedures;

ii. accountability and professional manner of its conduct;

iii. actual perceived or potential conflicts of interest;

iv. treatment of confidential information; and

v. any other matter the Client reasonably requires;

with regard to the Consultant's performance of the Contract, and if applicable, the conduct of any relevant tender processes managed by the Client directly or indirectly related to the Contract and/or the Services.

D.2.7. CONSULTANT'S ATTESTATION FOR REQUESTS FOR TENDERS

Where the Consultant is required to produce and deliver tender documents for any works to the Principal, the Consultant must also include a written attestation by the Consultant confirming that:

a. the tender documents comply with the Department of Housing and Works "*Open and Effective Competition Policy*" (works) and "*Guide Notes to Assist in the Preparation of the Specification Preliminaries and The Specification Generally for Works Contracts Tendered by the Department of Housing and Works in the Name of the Minister for Works*" with respect to specification by example of any materials, products or components of the works;

b. except for any required shop drawings detailing design development, the tender documents do not include any requirements for the contractor to provide any design performance requirements for any materials, products or components of the Works that the Principal's Representative has not expressly approved in writing;

c. the Consultant and any secondary or sub-consultant(s) has not received any financial incentive to specify any materials, products or components of the Works;

d. the tender documents do not include any nominated subcontractors that the Principal's Representative has not expressly approved in writing; and

e. the Consultant has checked all documents prepared by any subconsultant(s) engaged in the preparation of the tender documents and confirms those documents comply with all subclauses above, are coordinated and consistent with the architectural drawings and that there are no conflicts or clashes detected.

D.2.8. VARIATION OF CONTRACT FEE

If:

a. the Services involve all stages as described in C.6.2;

b. the Percentage Fee Schedule has been used to calculate the Fee; and

c. the Feeable Value has changed between when the Fee was set and when the pre-tender estimate associated with the construction contract is finalised;

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the Client may recalculate the Fee based on the latter Feeable Value if the Client believes that the change in Feeable Value has resulted in the Consultant being required to undertake more or less work than was envisaged when the Contract was awarded. The Client will notify the Consultant of its recalculation, and the Fee will be varied in accordance with the recalculation from the date of such notice.

D.2.9. ACCESS TO PREMISES AND RECORDS

Subject to the Client:

a. giving reasonable prior notice to the Consultant; and

b. complying with all reasonable directions and procedures of the Consultant relating to occupational health, safety, security and confidentiality in connection with the Consultant's premises,

the Consultant must allow the Client in connection with the Services, to:

a. have reasonable access to any premises used or occupied by the Consultant;

b. have reasonable access to all Records in the custody or control of the Consultant;

c. examine, audit, copy and use any Records in the custody or control of the Consultant; and

d. photograph, film or otherwise record anything done by the Consultant in supplying the Services, if reasonably required by the Client.

The Consultant must do everything necessary to obtain any third party consent which may be required to enable the Client to have access to records under this clause.

D.2.10. POLICE AND OTHER CLEARANCES

If the Client requests that the Consultant obtain and provide to the Client a National Police Clearance or Western Australian Police Integrity Check in respect of any Consultant's Personnel and Subconsultant's personnel:

a. the Consultant and any Subconsultant must comply with the request within 20 Business Days of the request; and

b. if a police clearance shows that any such personnel has committed a criminal offence punishable by imprisonment or detention, the Client may, without prejudice to its other rights, request the Consultant to promptly remove the personnel from involvement in the Services, and the Consultant must, at its own cost, promptly comply with the request and arrange for a suitable replacement of the personnel.

The Client may require the Consultant, Consultant's Personnel and Subconsultant's personnel to meet other requirements, and complete other declarations or be subject to other checks, as a condition of being considered for certain Contracts.

D.2.11. WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY – REPORTING OBLIGATIONS

The State Government's Western Australian Industry Participation Strategy ("**WAIPS"**) under the Western Australian Jobs Act 2017 (WA) came into full effect on 1 October 2018 and shall apply to this Panel.

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PART D

RESPONDENT TO READ AND KEEP THIS PART

Panel Members are encouraged to obtain a copy of the WAIPS from the Industry Link Advisory Service ("ILAS") at https://industrylink.wa.gov.au/advisory-services/services-to-state-government-agencies/industry-link-advisory-service.

The Panel Member must comply with WAIPS, which shall be applied to this Panel, in the manner set out below.

The Western Australian Jobs Act 2017 (WA) and the Western Australian Industry Participation Strategy ("WAIPS") made under it contain obligations for agencies to require from prospective suppliers reports in connection with the supply of goods or services to or for agencies or the State. The Principal is an 'Agency' for the purposes of WAIPS participation plans.

Both the Principal and the State may use or disclose the reports required under the Contract for the legitimate purposes of or relating to government or the business of government.

These reports may be subject to an independent audit.

D.2.11.1 Definitions

In this clause, the following term has the following meanings, unless the context otherwise requires:

"ILAS" means the Industry Link Advisory Service at the Department of Jobs, Tourism, Science and Innovation. More information on ILAS can be found at https://industrylink.wa.gov.au/advisory-services/services-to-state-government-agencies/industry-link-advisory-service.

D.2.11.2 Contract Reporting

The Panel Member must submit to the Principal a report and must use the form of, and must address the matters outlined in, the appropriate Report Template. These templates are available from the Principal and also ILAS.

The Panel Member must submit:

a. An Annual Report to the Principal at the conclusion of each financial year for the duration of this Panel, or on such other date each year as is notified by the Principal to the Panel Member; and

b. A Final Report no later than two (2) months after the expiration of the Panel.

Each report required under subclause (b) above must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

D.2.11.3 Use of Information

Both the Principal and the State of Western Australia may use or disclose any Annual Report or Final Report, or any information or documentation referred to in the clauses above for the legitimate purposes of or relating to government or the business of government.

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D.2.11.4 Clause Survives

This clause survives the termination or expiration of the Panel.

D.2.12. APPLICATION OF PRIVACY LAWS AND PRIS ACT

In this clause D.2.12.:

Government Agency means any Australian government or any governmental, semi-governmental, administrative, regulatory, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency, entity or Parliament**.**

Personal Information has the meaning given to it in the PRIS Act.

PRIS Act means the *Privacy and Responsible Sharing of Information Act* 2024 (WA).

Privacy Act means the *Privacy Act* 1988 (Cth).

Privacy Commissioner means the Australian Information Commissioner, the Information Commissioner and the Privacy Deputy Commissioner (as each of those terms is defined in the PRIS Act), and (upon commencement of the relevant provision) any other authority to whom a privacy complaint is referred in accordance with section 93 of the PRIS Act.

(a) The Consultant must:

i. comply with its obligations (if any) under or arising pursuant to the Privacy Act;

ii. whether or not the Consultant is an organisation which is bound by the Privacy Act or other privacy laws, comply with the Australian Privacy Principles set out in the Privacy Act as if it were required to comply with that legislation;

iii. facilitate the Principal's compliance with their obligations under the PRIS Act, including providing assistance as requested by the Principal; and

iv. not do or omit to do anything that is likely to cause the Principal or their respective officers, employees or agents to contravene the PRIS Act, to the extent relevant to the Contract.

v. The Consultant also agrees to comply with:

(A) such other Commonwealth, State or Territory legislation related to privacy;

(B) any directions made by a Privacy Commissioner;

(C) any reasonable policies, procedures and guidelines of the Principal relating to privacy; and

(D) any other reasonable direction relating to privacy which is given by the Principal.

(b) Without limiting the Consultant's obligations under clause D.2.12(a), the Consultant must, in relation to any Personal Information which it collects, holds, uses, has access to, or otherwise deals with in the course of performing its obligations under, or otherwise in connection with the Contract:

i. take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure; and

ii. where any breach of privacy occurs due to the Consultant's failure to comply with any obligation under this clause D.2.12, do all things necessary to mitigate the consequences of that breach;

iii. not modify or disclose the Personal Information except with the Principal's prior

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written approval; and

iv. ensure that the Personal Information is returned to the Principal (or is permanently destroyed if the Principal so elects) when it is no longer required for the performance of the Consultant's obligations under the Contract.

(c) The Consultant must immediately notify the Principal (providing full details) if it:

i. becomes aware of any suspected or actual misuse of, or any unauthorised access to or disclosure of, Personal Information held by the Consultant or the Consultant Personnel;

ii. receives, or otherwise becomes aware of, any complaints concerning its or the Principal's compliance with privacy obligations, including full details of how the Consultant intends to resolve the complaint;

iii. becomes aware that a disclosure of Personal Information may be required by law; or

iv. is approached with respect to privacy by any Government Agency or by any individual to whom any Personal Information relates.

(d) The Consultant must co-operate fully with the Principal to resolve:

i. any request, inquiry or notice from a Government Agency in relation to Personal Information which it collects or has access to in the course of performing its obligations under; or

ii. any complaint alleging a breach by any party of their respective privacy obligations in connection with, the Contract.

(e) Nothing in this clause D.2.12 is intended to limit any obligation of the Consultant under the PRIS Act or the Privacy Act (if applicable) with respect to Personal Information.

(f) This clause D.2.12 survives the termination or expiry of the Contract.

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PART D

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 1 TO PART D: W.A. GOVERNMENT AMENDMENTS TO AS 4122–2010

Annexure Part B
Annexure to the Australian Standard General Conditions of Contract for Consultants AS 4122-2010

The following clauses have been amended and differ from the corresponding clauses in AS 4122-2010.

CLAUSE 1 DEFINITIONS AND INTERPRETATION

- SUBCLAUSE 1.1 – DEFINITIONS

Immediately after the words "means the Documents listed in Item 3" insert the following:

, which have the order of precedence in accordance with the numbered list contained in Item 3 (which is shown in descending order);

- SUBCLAUSE 1.1 – DEFINITIONS

Insert the following new definition:

Consultant's Personnel *means all officers, employees, agents and Subconsultants of the Consultant.*

Insert the following new definition:

Default *includes:*

(a) an Insolvency Event;

(b) wrongful suspension of work;

(c) failing to provide evidence of insurance;

(d) failing to exercise the standard of care required by clause 4;

(e) failing to comply with a direction of the Client pursuant to clause 8;

(f) in respect of clause 10.4(c), knowingly providing documentary evidence containing an untrue statement;

(g) subject to clause 12.2:

(i) failing to complete the Services by the time stated in Item 13 without reasonable cause or the Client's approval; or

(ii) if a program is attached, substantial departure from the program without reasonable cause or the Client's approval; or

(iii) where there is no time stated in Item 13 or construction program, failing to proceed with due expedition and without delay without reasonable cause or the Client's approval; and

(h) failing to comply with Clauses 13.1 and 13.2.

Delete the definition of Force Majeure and in lieu thereof insert the following:

Force Majeure Event *means an event that makes it impossible for a party to perform its obligations in whole or part under this Contract and which is beyond the reasonable control of the affected party including:*

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(a) fire (other than fire caused by the affected party), flood, a category 3 or above tropical cyclone (as defined by the Australian Bureau of Meteorology) affecting the area where the Services are being performed, earthquake, tsunami or explosion;

(b) war, insurrection, civil disturbance or acts of terrorism; or

(c) act of God;

(d) impact of vehicles or aircraft; or

(e) epidemic or pandemic,

but does not include:

(f) lack of or inability to use funds for any reason;

(g) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with clause 4;

(h) an event or circumstance where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent contractor;

(i) breakdown of any equipment used by the Consultant or any Subconsultant;

(j) strikes or Industrial Action by the Consultant's Personnel in any way directed at the Consultant or any Subconsultant or directed at the Site;

(k) weather conditions or any effects of weather conditions, other than as described in sub-paragraph (a) above;

(l) act or omission of any Subconsultants (including if a Subconsultant suffers an Insolvency Event);

(m) a failure by a third party to fulfil a contract commitment to an affected party other than as a result of an event in paragraph (a) to (c) above; or

(n) *lack of resources, including local materials or personnel*

Insert the following new definition:

Industrial Action *means any strike, lockout or failure to attend for work, the imposition of any ban, limitation or delay in the performance of work, any refusal by an employee to work in accordance with that employee's contract of employment or the provisions of any Industrial Award, Agreement or Order, or the performance of work in a manner different from that in which it is customarily performed.*

Insert the following new definition:

Industrial Award *means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations Commission or Australian Industrial Relations Commission and includes Preserved State*

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PART D

RESPONDENT TO READ AND KEEP THIS PART

Agreements and Notional Agreements Preserving State Awards, and any agreement including a workplace or enterprise agreement between an individual or group of individuals and the Consultant or a Subconsultant that is lodged, registered or certified in accordance with any law applying in Western Australia.

Insert the following new definition:

***Subconsultant** means a person engaged by the Consultant under a contract or agreement under which the person agrees to perform any part of the Services.*

CLAUSE 4 STANDARD OF CARE

After the first paragraph, insert the following two (2) paragraphs:

The Consultant must ensure that, when delivered to the Client, the Deliverables are suitable, appropriate and adequate for the purpose stated in the Scope and are in accordance with all industry standards that are reasonably applicable to the Deliverables.

The Consultant must engage personnel, employees and Subconsultants with appropriate qualifications and experience to perform the Services.

CLAUSE 5 SCOPE

- SUBCLAUSE 5.4

Immediately after the words “The Consultant is entitled to an adjustment to the Fee and/or” insert the following:

an extension of

- SUBCLAUSE 5.5

Insert the following new subclause 5.5

(a) If the Consultant does not notify the Client under clause 5.2 within fourteen (14) days of receiving the Client Information from the Client, the Client Information shall be deemed to be accepted by the Consultant. Where the Client Information has been deemed to be accepted by the Consultant pursuant to this clause then the Consultant shall not be entitled to an adjustment to the Fee and/or an extension of time for providing the Services under clause 5.4 or any other clause of this Contract.

CLAUSE 7 INFORMATION

In the clause heading, immediately after the word *INFORMATION*, insert the words *AND DELIVERABLES*

Insert new subclause number 7.1 and delete the first word of subclause 7.1 (“The”) and in lieu thereof, insert the following:

When requested by the Consultant, the

Insert the following new subclause 7.2

7.2 Other than as set out in clause 26.4 the Consultant must deliver to the Client all Deliverables as reasonably requested by the Client from time to time.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

CLAUSE 8 DIRECTIONS

Insert the following new subclause 8.6

8.6 The Client may direct the Consultant to have removed from any activity connected with the Services, within such time as the Client directs, any person employed in connection with the Services who, in the opinion of the Client (acting reasonably), is not acting in the best interests of the project (which includes being, in the Client's opinion, guilty of misconduct or any criminal activity) or is incompetent or negligent.

A person removed under this clause 8.6 must not thereafter be employed or engaged on the project or on activities connected with the Services by the Consultant without the prior written approval of the Client.

CLAUSE 9 VARIATIONS

- SUBCLAUSE 9.2

Delete subclause 9.2 and in lieu thereof insert the following:

9.2 If the Consultant considers that a Direction constitutes a Variation but the Direction is not in writing or does not specify that it constitutes a Variation, then prior to commencing the work the subject of the Direction, the Consultant must notify the Client in writing that it considers that the Direction constitutes a Variation. The notice required to be given by the Consultant under this clause 9.2 must set out the grounds why the Consultant considers that the Direction constitutes a Variation.

If the Client agrees that the Direction constitutes a Variation, then it must notify the Consultant in writing and clause 9.3 will apply as if the Direction was given by the Client under clause 9.1. If the Client does not agree that the Direction constitutes a Variation, then it must notify the Consultant in writing and clause 32 will apply to resolve the Dispute. If the Consultant does not give the notice referred to in this clause 9.2 prior to commencing the work the subject of the Direction, then notwithstanding the remainder of this clause 9, the Consultant will be bound to implement and complete the required work and is not entitled to have the work valued as a Variation under clause 9.3 or to make any claim, whether for payment, adjustment to the Fee or the time for completing the Services or otherwise, in respect of that work.

- SUBCLAUSE 9.4

Immediately after the words "outside the general Scope of the Services." Insert the following:

If the Consultant considers that compliance with a Direction under clause 9.1 would vary the Services beyond the general Scope of the Services, it must notify the Client within 10 Business Days of the date of the Direction. Failure of the Consultant to notify the Client within 10 Business Days of the date of the Direction will constitute acceptance that the Direction is not outside the general Scope of the Services and, in that regard, the Consultant will be bound to comply with that Direction.

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PART D

RESPONDENT TO READ AND KEEP THIS PART

CLAUSE 10 PAYMENT

- SUBCLAUSE 10.4

Delete subclause 10.4 and in lieu thereof insert the following:

10.4 The payment claim must:

(a) in respect of the Services:

(i) identify the Services to which the payment claim relates;

(ii) separately identify each Variation;

(iii) separately identify any other claim for payment under this Contract including a payment stated in Item 20; and

(iv) set out the amount of the Fee claimed, and how that amount was determined;

(b) in respect of disbursements:

(i) identify each disbursement claimed;

(ii) state the amount of the disbursement claimed;

(iii) be accompanied by relevant invoices and receipts for payment;

(c) be accompanied by a statement from the Consultant confirming that:

(i) all amounts which are then due and payable by the Consultant to its Subconsultants have been duly paid by the Consultant;

(ii) the claim does not contain any amount for costs under the Contract which are expressly referred to as being at the Consultant's own cost;

(iii) no fees or wages are due and owing by the Consultant in respect of its obligations under the Contract for the period to which the payment claim relates; and

(iv) no Subconsultant or any other person engaged by the Consultant arising out of or in connection with this Contract has a lien or similar entitlement to any of the Deliverables or any item in respect of the Deliverables;

(d) be accompanied by any other information and documentation reasonably required by the Client;

(e) be in the form of a valid tax invoice unless a Recipient Created Tax Invoice Agreement has been entered into by the parties; and

(f) include details of any matters which have arisen to the date of the claim which may affect the total fees payable under this clause and, where practicable, an estimate of the amount thereof.

- SUBCLAUSE 10.11

Insert the following new subclause 10.11:

10.11 The Client shall make payments to the Consultant only. The Consultant is responsible for making any payment that is due to its contractors, Subconsultants and consultants.

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PART D

RESPONDENT TO READ AND KEEP THIS PART

CLAUSE 12 TIME

- SUBCLAUSE 12.1

Immediately after the words "time stated in Item 13" insert the following:

, or if a program is attached, the Consultant must complete the Services in accordance with the program attached to this Contract. Where there is an inconsistency between any date appearing in the Contract and a program attached to this Contract then the date appearing in the Contract shall be deemed to prevail.

- SUBCLAUSE 12.1A

Insert the following new subclause 12.1A after subclause 12.1:

12.1A As soon as the Consultant reasonably considers that anything, including an act or omission of the Client or its employees, agents or Subconsultants, may delay the performance of the Services, the Consultant must promptly notify the Client in writing with details of the possible delay and proposals for mitigating the potential for delay of completion of the Services.

- SUBCLAUSE 12.2

Delete subclause 12.2(b) "a *Force Majeure"*

- SUBCLAUSE 12.2

Delete the following:

Consultant notifies the Client of the delay and its cause promptly after the Consultant becomes aware of the delay or its cause and provides reasonable evidence of the cause and duration of the delay.

And in lieu thereof, insert the following:

(e) the Consultant must submit a written claim for an extension of time to the Client within 10 Business Days of the cause of the delay commencing, which claim must set out the facts on which the claim is based and the period of time for which an extension of time is claimed (or is expected to be claimed if the cause is ongoing);

(f) the completion of the Services has actually been delayed due to one of the causes of delay set out in this Clause 12.2 and

(g) the Consultant has taken all reasonable steps to minimize the delay and no reprogramming or alteration of the sequence of activities or other method could avoid the delay.

- SUBCLAUSE 12.3

Immediately after the words "must pay the Consultant's reasonable" insert the following:

and necessary

- SUBCLAUSE 12.4

Insert the following new subclause 12.4:

12.4 The Consultant's entitlement to an extension of time under clause 12.2 will be reduced to the extent that the delay has been caused or contributed to by:

(a) an act or omission of the Consultant or the Consultant's Personnel; or

(b) any cause of delay which is not set out in clause 12.2.

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RESPONDENT TO READ AND KEEP THIS PART

- SUBCLAUSE 12.5

Insert the following new subclause 12.5:

12.5 Where Item 13 provides for a program to be provided by the Consultant for the purposes of clause 12.1, then:

(a) The program shall be in a form appropriate to the project and acceptable to the Client and should:

(i) set out a program for the delivery of the Services to meet the completion date or dates stated in the Annexure;

(ii) indicate the interdependencies of each component part of the Services;

(iii) allow appropriate periods for the review by the Client of Documents to be produced by the Consultant;

(iv) clearly indicate any allowances made in the program for delays to the provision of the Services or any component parts of the Services outside the Consultant's control; and

(v) include a separate time line for each discrete component of the Services and a completion date for each of those components.

(b) During the Contract, the Consultant shall progressively make the necessary adjustments to the program to ensure each stated completion date is achieved. If the Consultant at any time believes that the Consultant may be unable to meet a completion date for any reason, the Consultant shall notify the Client in writing and state the remedial action necessary to achieve the completion date.

(c) If the Client considers that the Consultant may not meet a completion date, it may notify the Consultant and require the Consultant to notify within a reasonable time specified in the notice what remedial action (if any) the Consultant proposes to take to ensure that the relevant completion date is met.

(d) The Consultant shall submit reports to the Client in an agreed format and at agreed intervals as to the progress of the Services. The Consultant shall attend progress review and co-ordination meetings in accordance with the requirements of the Client and at a location specified by the client and shall attend any other meetings which are desirable to ensure the proper and effective provision of the Services by the Consultant.

(e) The Client may direct the Consultant to deviate from the current program provided by the Consultant. The Consultant shall be entitled to recover any extra costs and expenses incurred by it as a consequence of any deviation directed by the Client under clause 15.1 only if the deviation is required for the convenience of the Client or the deviation is due to a cause outside the reasonable control of the Consultant.

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PART D

RESPONDENT TO READ AND KEEP THIS PART

CLAUSE 13 LAW AND APPROVALS

- SUBCLAUSE 13.3

Delete subclause 13.3 and in lieu thereof insert the following:

13.3 If there is a new Legislative Requirement or Approval, or a change in a Legislative Requirement or Approval which:

(a) occurs after agreement of the Fee;

(b) the Consultant is bound to comply with or obtain;

(c) causes the Consultant to incur more or less cost or time than otherwise would have been incurred or expended (other than the costs of any fines or penalties); and

(d) could not have been reasonably anticipated by the Consultant prior to the date of the Contract,

then, provided the Consultant has taken all reasonable steps to mitigate and minimise all costs and expenses, or any delay in the delivery of the Services, the difference in cost will be valued as a Variation and an extension of time may be granted in accordance with clause 12.

CLAUSE 15 REVIEW AND ACCEPTANCE

- SUBCLAUSE 15.2

Delete the entire subclause and in lieu thereof insert the following:

15.2 The Consultant remains responsible for the Services despite any:

(a) review or acceptance of any of the Services or the Deliverables by the Client;

(b) Directions (other than any Directions which are either wrongful or negligent) given by the Client in respect of the Services, the Deliverables or the performance of the Consultant's obligations under the Contract; or

(c) failure by the Client to review or accept any of the Services or Deliverables.

CLAUSE 16 ADVERSE EVENT

After the first paragraph, insert the following paragraph:

The Consultant acknowledges and agrees that, except where expressly provided in the Contract, the Consultant will not be entitled to any extension of time, payment for costs incurred or other relief with respect to any matter or circumstances the subject of clause 16.

CLAUSE 18 KEY PERSONNEL

Delete the words "is not available due to circumstances beyond the reasonable control of the Consultant" and in lieu thereof insert the following:

(a) resigns from employment or terminates their employment or independent contract with the Consultant;

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(b) dies;

(c) commits a breach of any express or implied term of their employment contract or independent contract and is terminated as a result; or

(d) is otherwise incapable of continuing to perform duties in respect of the Services due to illness,

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CLAUSE 20 SUBCONTRACTING AND ASSIGNMENT

- SUBCLAUSE 20.3

Delete the words "(which must not be unreasonably withheld or delayed)" and in lieu thereof insert the following:

which:

(a) must not be unreasonably withheld or delayed; and

(b) may be conditional upon such reasonable conditions as the Client may impose, including that the Consultant obtain from a Subconsultant the corresponding Intellectual Property Rights granted to or vested in the Client pursuant to clause 21 and appropriate professional indemnity insurance.

- SUBCLAUSE 20.5

Insert the following new subclause 20.5:

20.5 For the purposes of clause 20, transfer or assignment shall be taken to include any material changes to the Consultant where the Consultant, being a partnership, company, consortium or other composite body, undergoes a material change in its structure, shareholding, membership or control which in the opinion of the Client will affect the manner in which or the ability of the Consultant to perform the Contract.

CLAUSE 21 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- SUBCLAUSE 21.4

Immediately after the words "the amount stated in Item 20" insert the following

(or if no amount is stated, no additional amount is payable to the Consultant).

CLAUSE 24 SUSPENSION BY THE CLIENT

- SUBCLAUSE 24.2

Delete the entire subclause and in lieu thereof insert the following:

Unless the suspension has been directed due to the Consultant's breach of the Contract or breach of any Legislative Requirement or Approval, the Client must pay the Consultant any costs and expenses reasonably incurred by the Consultant as a result of the suspension. The Client will not be liable for payment under this clause 24.2 unless and until:

(a) the Consultant provides evidence, to the reasonable satisfaction of the Client, of the costs and expenses incurred by the Consultant; and

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(b) the Consultant can demonstrate that the Consultant took all reasonable steps to mitigate and minimise any costs and expenses incurred by the Consultant by reason of the suspension.

CLAUSE 25 SUSPENSION BY THE CONSULTANT

- SUBCLAUSE 25.3

Delete the entire subclause and in lieu thereof insert the following:

25.3 If the Consultant suspends the performance of the Services under clause 25.1:

(a) the Consultant must recommence the performance of the Services as soon as possible and give prompt notice to the Client of the recommencement of the Services;

(b) except as expressly provided elsewhere in the Contract, the Consultant will not be entitled to claim any additional costs, extension of time or other form of relief in respect of the suspension of the performance of the Services by the Consultant; and

(c) the Client's payment obligations under the Contract will be suspended during the period of the suspension of the performance of the Services, unless the parties otherwise agree in writing or the payment obligation relates to Services performed prior to the time of suspension.

CLAUSE 26 TERMINATION WITHOUT CAUSE

In the clause heading, immediately after the word TERMINATION, delete the words WITHOUT CAUSE.

- SUBCLAUSE 26.2

Delete the entire subclause and in lieu thereof insert the following:

26.2 If the Contract is terminated under clause 26.1, the Client must pay to the Consultant:

(a) the applicable portion of the Fee for the Services performed prior to the date of termination;

(b) all disbursements incurred by the Consultant prior to the date of the termination which would have been payable had this Contract not been terminated;

(c) any direct costs reasonably incurred by the Consultant in the expectation of completing the whole of the Services and not included in any payment by the Client; and

(d) all demobilisation costs reasonably incurred by the Consultant (but not including any relocation costs incurred by the Consultant).

The Client is not liable to the Consultant under this clause 26 for any amount greater than the amount that the Client would have paid to the Consultant had this Contract been completely performed.

- SUBCLAUSE 26.4

Delete the entire subclause and in lieu thereof insert the following:

Reference Only

26.4 In the event that this Contract is terminated in accordance with this clause 26, following payment of the amount due to the Consultant under clause 26.2, the Consultant must deliver to the Client all Deliverables and all Documents which, on completion, would be Deliverables.

CLAUSE 27 TERMINATION DUE TO DEFAULT BY EITHER PARTY

Delete the entire clause and in lieu thereof insert the following:

27.1 If either party commits a Default of this Contract, the other party may give to the party who committed the Default a written notice to remedy the Default. A notice given under this clause 27.1 must:

(a) state it is a notice given under this clause;

(b) specify the alleged Default with reasonable details;

(c) require the party who committed the Default to remedy the Default; and

(d) specify the date (which must not be less than five Business Days after the notice is served) by which the party who committed the Default must remedy the Default.

27.2 If the recipient of a notice given under clause 27.1 fails to:

(a) remedy the Default; or

(b) provide an undertaking in writing to the reasonable satisfaction of the party issuing the notice of the steps it intends to take to remedy the Default,

within the time specified in the notice, the other party may, by further written notice:

(c) terminate this Contract; or

(d) if the Default is a failure of the Client to pay the Consultant under clause 10, the Consultant may suspend performance of the Services until payment is made.

27.3 If the Consultant suspends performance of the Contract pursuant to this clause, the Consultant must promptly lift the suspension after the Client remedies the breach unless the Consultant has terminated the Contract."

CLAUSE 28 INDEMNITY

- SUBCLAUSE 28.1

Immediately after the words "by the Consultant or negligent or" insert the following:

wilful or

CLAUSE 29 LIMITATION OF LIABILITY

- SUBCLAUSE 29.1

Immediately after the words "the amount specified in Item 24" delete the words "if any." And in lieu thereof insert the following:

. If no amount is specified in Item 24, the liability of the Consultant is not limited.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

- SUBCLAUSE 29.2

Delete the entire subclause and in lieu thereof insert the following:

29.2 Any limitation of liability granted under clause 29.1 does not apply to liability arising from:

(a) personal injury (including psychological injury) or death;

(b) infringement of Intellectual Property Rights;

(c) any breach by the Consultant of clause 19;

(d) any claims made by a third party in respect of exemplary and punitive damages;

(e) fraudulent, malicious or criminal conduct;

(f) wilful default;

(g) any act or omission with reckless disregard for the consequences; or

(h) any breach of confidence or privacy in connection with the Contract,

of or by the Consultant or the Consultant's Personnel.

CLAUSE 30 INSURANCE

- SUBCLAUSE 30.8

Insert the following new subclause 30.8 immediately after subclause 30.7:

30.8 The insurances contemplated by this clause 30 are primary and not secondary to the indemnities referred to in this Contract. However, the Client is not obliged to make a claim or institute proceedings against any insurer under the insurance policies before enforcing any of its rights or remedies under the indemnities referred to in the Contract, or generally.

CLAUSE 31 INSOLVENCY

- SUBCLAUSE 31.1

Immediately after the words “Insolvency Event” insert the following:

(except to the extent stayed by operation of section 415D, 434J or 451E of the Corporations Act 2001 (Cth))

CLAUSE 31A FORCE MAJEURE

Insert the following new clause 31A:

31A.1 If a Force Majeure occurs:

(a) the party affected by the Force Majeure must give notice to the other party, describing the Force Majeure in reasonable detail;

(b) the Client may, by written notice within 5 Business Days of the notice under clause 31A.1(a), in its absolute discretion and without any obligation to act reasonably, grant an extension of time for completion of the Services;

Reference Only

(c) the party affected by the Force Majeure will be excused from performance and will not be construed to be in default for so long as, and to the extent that:

(i) the party's failure to perform an obligation under the Contract is due to the Force Majeure,

(ii) the party continues to perform its obligations under the Contract which are not affected by the Force Majeure; and

(iii) the party makes all reasonable efforts to prevent, reduce to a minimum and mitigate the effect of any delay caused by the Force Majeure.

31A.2 If a Force Majeure prevents either party from performing any of its obligations under the Contract, the Client may elect to terminate the Contract by notice in writing to the Consultant and must pay the Consultant for the Deliverables delivered prior to the date of termination, payment for which was not included on a previous claim for payment, the amount which would have been payable in respect of those Deliverables if the Contract had not been terminated and the Consultant had been entitled to and had made a payment claim on the date of termination. A claim for payment under this clause 31A.2 must comply with the requirements of clause 10.

31A.3 The Consultant must take all reasonable steps to mitigate and minimise any costs and expenses incurred, or to be incurred, by the Consultant by reason of the termination.

31A.4 Upon termination and payment of the amount due to the Consultant under clause 31A.2, the Consultant must deliver to the Client any completed Contract Documents and those other documents commenced which when completed would have formed the Deliverables. The Consultant is not liable in respect of the Deliverables which are incomplete by reason only of the termination.

CLAUSE 32 DISPUTE RESOLUTION

- SUBCLAUSE 32.1

Delete the entire subclause and in lieu thereof insert the following:

If a dispute or difference between the Consultant and Client arises out of or in connection with the Contract either party shall within seven (7) days of the dispute or difference arising serve the other party with a notice of dispute in writing by certified mail identifying and providing all details of the dispute or difference.

- SUBCLAUSE 32.4

Delete the entire subclause and in lieu thereof insert the following:

If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may commence litigation or, if agreed in writing by the parties, commence arbitration or other alternative dispute resolution proceedings.

CLAUSE 33 SERVICE OF NOTICES

- SUBCLAUSE 33.2

After reference to clauses 24, 25, 26, 27 and 31, insert the following:

31A

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

CLAUSE 35 GOVERNING LAW

Each party irrevocably submits to the exclusive jurisdiction of courts exercising

Delete the words "and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in that State or Territory" and insert the following paragraph in lieu

> *jurisdiction in that State or Territory and courts of appeal from them in respect of any proceedings arising out of or in connection with the Contract. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.*

CLAUSE 37 WARRANTIES

Insert the following new clause 37:

37 The Consultant warrants that:

(a) it has full power and authority to enter into and perform its obligations under the Contract;

(b) the Consultant and all of the Consultant's Personnel are competent and have all the necessary skills, training and qualifications to perform the Services;

(c) it has taken all necessary action to authorise the execution, delivery and performance of the Contract in accordance with its terms; and

(d) the Contract constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms.

Reference Only

PART D

RESPONDENT TO READ AND KEEP THIS PART

SCHEDULE 2 TO PART D: ANNEXURE TO GENERAL CONDITIONS OF CONTRACT

Annexure Part A

Annexure to the Australian Standard General Conditions of Contract for Consultants AS 4122-2010

(SAMPLE COPY - TO BE COMPLETED FOR EACH CONTRACT ARRANGED THROUGH THE PANEL AS PART OF ENGAGEMENT PROCESS AND ATTACHED TO THE LETTER OF ACCEPTANCE)

Item		
Item 1 (clause1.1)	The Client is:	The Minister for Works
Item 2 (clause 1.1)	The Consultant is:	[1]
Item 3 (clause 1.1)	The Contract Documents are:	1. The Letter of Acceptance, including attachments; 2. The Special Conditions of Contract; 3. The General Conditions; 4. Head Agreement; 5. [2]
Item 4 (clause 1.1)	The Scope is described in the following Documents, or the Scope is:	[3]
Item 5 (clause 5.1)	The purpose(s) for which the Services will be suitable is/are:	[4]
Item 6 (clause 6.1)	The Client's representative (Project Manager) is:	[5]
Item 7 (clause 6.2)	The Consultant's representative is:	[6]
Item 8 (clause 10.1)	Claims for payment must be made on the following basis:	[7]Contract Fee: $……. based on:

Reference Only

[1] *Insert the Consultants name.*

[2] *Insert other relevant Documents forming this Contract, such as the Brief as amended and supplied with the Invitation to Submit proposal, as applicable*

[3] *The 'Scope', within the context of AS 4122-2010, is intended to describe the Scope of the Services that are required to be performed and their relationship to the project being undertaken by the Client. Either identify the Documents that describe the Scope or include a statement of the Scope in this item.*

[4] *Insert the purpose(s) for which the Consultant's Services have been engaged*

[5] *Insert the name, address, email address, facsimile number and phone number of the person responsible for administering this Consultant Contract. This may or may not be a Department of Housing and Works Officer.*

[6] *Insert the name of the Consultant's representative for this Consultant Contract.*

[7] *Specify the fee amount for the Contract. The Contract Fee is inclusive of all fees of the Consultant and necessary Subconsultants*

PART D

RESPONDENT TO READ AND KEEP THIS PART

<table>
<tr><td></td><td></td><td>
<table>
<tr><td colspan="3">[8]Percentage…… % of……
And/or</td></tr>
<tr><td>Hourly Rates</td><td>Yes</td><td>~~No~~</td></tr>
<tr><td colspan="3">(Strike through as appropriate)</td></tr>
<tr><td>[9]GST Inclusive</td><td>Yes</td><td>No</td></tr>
<tr><td colspan="3">(Strike through as appropriate)</td></tr>
<tr><td colspan="2">[10]Role / Task:</td><td>Rate $/per</td></tr>
<tr><td colspan="2">-</td><td></td></tr>
<tr><td colspan="2">[11]Stage / Task</td><td>$ / % of Fee</td></tr>
<tr><td colspan="2"></td><td></td></tr>
</table>
</td></tr>
<tr><td>Item 9
(clause 10.2)</td><td>Disbursements for which the Consultant may claim payment:</td><td>[12]</td></tr>
<tr><td>Item 10
(clause 10.3)</td><td>Time to claim payment is not later than:</td><td>[13]</td></tr>
<tr><td>Item 11
(clause 10.6)</td><td>Time for payment is no later than:</td><td>30 calendar days</td></tr>
<tr><td>Item 12
(clause 10.9)</td><td>The rate of interest for overdue payment is:</td><td>6.00% per annum.</td></tr>
<tr><td>Item 13
(clause 12.1)</td><td>[14]Alternative 1: The date after commencement of this Contract, by which the Services must be completed is:</td><td>Alternative 1:
Date: As set in the Letter of Acceptance</td></tr>
<tr><td></td><td>[15]Alternative 2: Under the program attached.</td><td>Alternative 2: see attached program.</td></tr>
</table>

Reference Only

[8] *Specify whether claims for payment will be on a, percentage, or hourly rates basis or any combination.*

[9] *Specify whether the basis is inclusive or exclusive of GST.*

[10] *If rates apply, specify rates and intervals.*

[11] *Specify whether claims for payment, however calculated, will be paid in a single Contract fee or in stages.*

[12] *Insert any additional disbursement claims related to the Contract.*

[13] *If left blank, the time for making a claim is the last business day of each month. Only one claim may be made each month.*

[14] *Select the appropriate alternative. If alternative 1 is selected insert the date by which the Services are to be completed or the period after the commencement of the Contract by which they are to be completed.*

[15] *If Alternative 2 is to apply, a program must be attached and only after you have consulted with your manager. This still must clearly indicate a date for completion and the various stages/tasks in the program. If you wish for the Consultant to provide a program as part of the tender then this should be specifically provided for in detail in the Annexure and must state the date when the Consultant must*

PART D

RESPONDENT TO READ AND KEEP THIS PART

Item 14 (clause 12.3(c))	Other causes of delay for which the Consultant may notify an extension of time:	Not Applicable.
Item 15 (clause 13.2)	The Approvals to be obtained by the Consultant are:	As required by the terms of the Contract and by law.
Item 16 (clause 18)	The Key Personnel are:	[16]
Item 17 (clause 19.2)	Existing conflicts of interest:	[17]
Item 18 (clause 21.3)	Copyright and other Intellectual Property Rights, the Alternative is:	Alternative 2
Item 19 (clause 21.3 alternative 2)	List of excluded Intellectual Property Rights:	None
Item 20 (clause 21.4 alternative 2)	The additional amount payable to the Consultant for the granting of Intellectual Property Rights is:	None
Item 21 (clause 22.1)	Does clause 22 (Moral Rights) apply?	[18]Yes / No If Yes, the author is:
Item 22 (clause 23.1)	The following Documents are confidential:	All materials provided to the Consultant by the Client or any other party for the purpose(s) of this Contract.
Item 23 (clause 24.4)	Maximum period for which the Client may suspend the Services at any one time, after which the Consultant may terminate:	The Clients right to suspend the Services is unlimited
Item 24 (clause 29.1)	The Consultant's Liability is limited to:	If no amount is specified, the Consultant's liability is unlimited.

Reference Only

provide that program by, and also within what parameters of date(s) of completion for the Services or components of the Services. This should be set out in detail in this Item. If you are unsure, you should seek advice from you line manager. If nothing is stated or attached then the time for completion will be within a reasonable time which is not acceptable, therefore it is imperative that the requirements for the program as specified in detail.

[16] *Insert the Key Personnel to be used for this Contract .*

[17] *Project Manager to insert any conflict of interest that may exist for this Contract.*

[18] *Select Yes if the Principal/Client is to going to be obliged to attribute the physical work to the Consultant or other author.*

PART D

RESPONDENT TO READ AND KEEP THIS PART

Item 25 (clause 30.2)	The amount of public liability insurance is:	$10 Million
Item 26 (clause 30.4)	The amount of professional indemnity insurance is:	*19*$5 Million
Item 27 (clause 30.4)	The professional indemnity insurance must be maintained for the following period	For the duration of the contract plus six (6) years
Item 28 (clause 30.7)	The Client must effect the following insurances and maintain them for the following periods:	*20*None
Item 29 (clause 33.1)	The address for service of notices is:	The Client *21* The Consultant *22*
Item 30 (clause 35)	The law governing this Contract is:	The law of Western Australia.
Item 31	Has this Contract been amended from its original form?	Yes. Refer to Annexure Part B, the Special Conditions and the Head Agreement.

Reference Only

[19] *The level of Professional Indemnity Insurance should reflect the risks in the project and sufficiently protect the Principal against possible loss. If unsure, seek advice from your line manager or Riskcover.*

[20] *Insert the type, periods and amounts of any additional insurances that you may require the Client to effect that may be specific to your project, if any. If unsure, seek advice from your line manager or Riskcover.*

[21] *Insert the name, postal address and email address of the Client's representative.*
Insert the name, postal address and email address of the Consultant for this Contract.

SCHEDULE 3 TO PART D: COVID-19

1 COVID-19

1.1 APPLICATION OF THIS CLAUSE

This clause applies to the extent that COVID-19 affects the Works under the Contract and only for relief purposes.

Where a conflict and/or inconsistency exists between this clause and any other provision of the Contract, this clause takes precedence.

1.2 DEFINITIONS

In this clause, the following definitions apply:

(a) **Change in COVID-19 Law** means a COVID-19 Law that:

(i) comes into effect, or ceases to be in effect, after the day being 14 days prior to the date of closing of tenders for the Contract;

(ii) necessitates, or results in, a change in the Works or the Consultant's method of working; and

(iii) directly results in an increase or decrease in the Costs incurred by the Consultant in carrying out the Works.

(b) **Costs** means costs necessarily incurred excluding corporate overhead and profit.

(c) **COVID-19** means the coronavirus disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(d) **COVID-19 Effects** means impacts on a party's ability to perform its obligations under the Contract arising from COVID-19 (including COVID-19 Laws) and includes impacts to the cost of performing, or delay or disruption to performance of, those obligations.

(e) **COVID-19 Law** means in relation to Western Australia or the Commonwealth of Australia:

(i) an act of parliament or statute; and

(ii) any subordinate legislation, rules, regulations directions or by-laws,

made or amended (to the extent of the amendment) as a direct consequence of COVID-19; and

(iii) any document or policy issued under such legislation or delegated legislation made or amended (to the extent of the amendment) as a direct consequence of COVID-19 and with which the Consultant is legally required to comply.

(f) **COVID-19 Relief Event** means:

(i) a Change in COVID-19 Law;

(ii) a suspension by the Principal under clause 1.4; or

(iii) a delay arising after the day being 14 days prior to the date of closing of tenders for the Contract caused as a direct result of COVID-19 which:

(A) has an adverse effect on the supply of labour, equipment or materials required for the Works; and

(B) is not related to a COVID-19 Law.

(g) **Works** means the works to be carried out under the Contract, including temporary works.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

1.3 COVID-19 EFFECTS

1.3.1 GENERAL

(a) The parties acknowledge and agree:

(i) to the potential for COVID-19 Effects; and

(ii) the Consultant is deemed to have taken into account, and fully priced and programmed for, all COVID-19 Effects known (or which should reasonably have been known) as at the day being 14 days prior to the date of closing of tenders for the Contract.

(b) The Consultant must:

(i) proactively monitor potential COVID-19 Effects;

(ii) use its reasonable endeavours to mitigate COVID-19 Effects;

(iii) give the Principal fortnightly reports on potential or actual COVID-19 Effects and the Consultant's steps taken to avoid or reduce those effects irrespective of whether the Consultant intends to make a claim;

(iv) where an entitlement to time or Costs arises under clause 1.3, clause 1.4 or clause 1.5, provide all supporting documentation reasonably requested by the Principal (including programming and costing information) on a fully transparent and open basis; and

(v) include in all sub-contracts' relief for COVID-19 Effects that is the same or the equivalent to the relief provided in the Contract and warrant that any amounts which are due and payable to subconsultants have been duly paid by the Consultant to the relevant subconsultants.

1.3.2 NOTICE

(a) The Consultant must promptly give notice to the Principal if the Consultant becomes aware of any potential or actual COVID-19 Effects that may:

(i) delay or disrupt the Works;

(ii) increase or decrease the costs of carrying out the Works; or

(iii) otherwise have an adverse effect on the Contract,

including a description of the cause of the effect and the way in which the effect is to be avoided or reduced.

(b) To the extent the Consultant is entitled to relief under this clause 1.3 (COVID-19 Effects), relief applies only from the date notice is given by the Consultant under subclause (a) above (other than relief for the period between the day being 14 days prior to the date of closing of tenders for the Contract and the date of the Contract).

1.3.3 CHANGE IN COVID-19 LAW

(a) If there is a Change in COVID-19 Law, the Principal must pay the Consultant, or the Consultant must pay the Principal, as the case may be, the increased or decreased Costs (as applicable) in carrying out the Works that directly resulted from the Change in COVID-19 Law.

(b) The Consultant's entitlement to be paid increased Costs under subclause (a) above is reduced to the extent the Consultant:

(i) could have avoided and/or reduced the Costs by taking reasonable steps under clause 1.3.1(b)(ii); and

(ii) otherwise recovered or could recover the Costs.

(c) The Principal will determine the amount payable under subclause (a) above, acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

1.3.4 EXTENSION OF TIME[23]

(a) If:

(i) the Consultant is or will be delayed in reaching Practical Completion by a COVID-19 Relief Event;

(ii) delay is demonstrable by reference to the critical path contained and shown in the then current program; and

(iii) the Consultant gives the Principal a claim for an extension of time within 14 days of when it became aware (or should reasonably have become aware) of the delay including details of the nature, cause and likely extent of the delay,

the Consultant will be entitled to an extension of time for Practical Completion equal to the period of delay.

(b) If the effects of the COVID-19 Relief Event are continuing, or not fully ascertainable at the time of giving notice under subclause (a)(iii) above, the Consultant may submit further claims every 14 days.

(c) The Consultant's entitlement to an extension of time is reduced to the extent which the Consultant could have avoided or reduced the delay by taking reasonable steps under clause 1.3.1(b)(ii).

(d) To the extent the delay is also caused by an event that is not a COVID-19 Relief Event, the delay must be apportioned according to the respective causes' contribution.

(e) The Principal will reasonably determine the period of the extension of time under this clause 1.3.4 acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including an electronic copy of the then current program) to enable a determination to be made under this clause.

1.3.5 DELAY COSTS

(a) Subject to subclause (b) below, the Consultant will be entitled to additional Costs it incurred during any extension of time period granted under clause 1.3.4.

(b) The Consultant will only be entitled to Costs incurred for demobilising and remobilising the Consultant's personnel, subcontractors and equipment if there is a suspension under clause 1.4 (Suspension for COVID-19 Effects).

(c) The Consultant's Costs entitlement under subclauses (a) or (b) above is reduced to the extent the Consultant:

(i) could have avoided or reduced the Costs by taking reasonable steps under clause 1.3.1(b)(ii); and

(ii) recovered or can recover the Costs.

(d) The Principal will reasonably determine Costs payable under this clause 1.3.5 acting reasonably. The Consultant must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause.

1.4 SUSPENSION FOR COVID-19 EFFECTS

(a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion, that the suspension of the whole or part of the Works is necessary due to COVID-19 Effects, direct the Consultant to suspend the performance of the whole or part of the Works for such time as the Principal thinks fit.

(b) As soon as the reason for any suspension no longer exists, the Principal must notify the Consultant in writing.

(c) Upon notice from the Principal, the Consultant must recommence performance of the Works as soon as reasonably possible.

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[23] *NOTE: The clauses are not intended to be exhaustive as to the State's rights, only the Consultant's rights to relief. Therefore, it remains open to the State to give a direction under any other contract provision (eg to accelerate or reprogram works) rather than grant an extension of time.*

Reference Only

(d) The Consultant must ensure that its subcontracts contain a suspension clause on the same terms as this clause 1.4.

1.5 TERMINATION FOR CONVENIENCE FOR COVID-19 EFFECTS

1.5.1 TERMINATION FOR CONVENIENCE

(a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion not to continue the Contract due to COVID-19 Effects, by notice in writing to the Consultant (**Termination for Convenience Notice**), terminate the Contract.

(b) The Contract will terminate on the date and time stated in the Termination for Convenience Notice or, if no such date and time is stated, at the date and time the Termination for Convenience Notice is given to the Consultant.

(c) Clause 1.5.2 (Procedure on Termination), clause 1.5.3 (Payments on Termination for Convenience) and clause 1.6 (Limit to Consultant's COVID-19 Rights) survive the termination of the Contract.

1.5.2 PROCEDURE ON TERMINATION

Upon receipt of a Termination for Convenience Notice, the Consultant must:

(a) make safe and cease performance of the Works;

(b) after ensuring the Site is secure and safe, leave the Site;

(c) provide the Principal with any information requested by the Principal relating to the Works or the Contract, including Design Documents and any other drawings;

(d) novate to the Principal any subcontracts relating to the Works that the Principal requires to be novated (and the Consultant must include in its subcontracts a corresponding novation clause);

(e) transfer to the Principal any entitlement to receive unfixed plant or materials that are in transit but have not yet been delivered to Site, free from encumbrances;

(f) do all things and execute all further documents necessary to give full effect to this clause 1.5.2; and

(g) take any other action the Principal reasonably requires relating to the termination of the Contract.

1.5.3 PAYMENTS ON TERMINATION FOR CONVENIENCE

(a) If the Principal terminates the Contract under clause 1.5.1, the Principal must pay the Consultant:

  (i) the amount due under the Contract for the Works performed up to the date of termination;

  (ii) Costs incurred by the Consultant under any subcontract as a direct consequence of the Principal's termination, provided that the Consultant has taken all reasonable steps to mitigate and minimise these costs and expenses, including having a corresponding termination for convenience clause in the subcontract;

  (iii) the Cost of materials reasonably ordered by the Consultant for the Works, which the Consultant is liable to accept (subject to exercise of any termination rights by the Consultant if the Principal so directs), subject to the materials becoming the Principal's property upon payment;

  (iv) the reasonable Costs of demobilisation; and

  (v) the reasonable Costs of complying with any directions given by the Principal upon, or subsequent to, termination.

(b) The Consultant must submit a payment claim for the amount it claims is payable in accordance with clause subclause (a) above within 30 calendar days of the date of termination.

(c) If the Costs are not fully ascertainable at the time of submitting a payment claim under subclause (b) above, the Consultant must identify the Costs that are not yet able to be quantified and the date by which they can be quantified. If the Principal consents to the timing of the provision of the quantified Costs, the Consultant may submit a further payment claim in accordance with the agreed timetable.

(d) The Principal will reasonably determine the amount payable by it under clause 1.5.3(a). The Consultant must provide the Principal, upon reasonable request, all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

1.6 LIMIT TO CONSULTANT'S COVID-19 RIGHTS

(a) The Consultant's entitlements under clause 1.3 (COVID-19 Effects), clause 1.4 (Suspension for COVID-19 Effects), and clause 1.5 (Termination for Convenience for COVID-19 Effects) are the Consultant's sole remedy in respect of COVID-19 Effects and under no circumstances will the Consultant be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, loss of opportunity, loss of revenue, any redundancies or any other economic loss.

(b) Except for the Principal's breach of clause 1.3, clause 1.4 or clause 1.5, the Consultant is absolutely barred from making any claim against the Principal and the Principal may plead this clause as a bar to any claim by the Consultant against the Principal (whether under the Contract or otherwise at law or in equity) in respect of COVID-19 Effects.

Reference Only

RESPONDENT TO READ AND KEEP THIS PART

PART E CONTENT REQUIREMENT FOR RESPONDENT'S OFFER

E.1. COMPLETING THE OFFER

In completing their Offer Respondents are to complete and submit the forms contained in *Schedule 1 to Part E: Forms to be Completed*. The forms to be completed include a reference to the commentary provided in Part E. In particular Respondents are to ensure that in completing the required forms and in the provision of other required information they take account the requirements contained in E.3 to E.11.

Respondents should also note the instructions regarding the submission of the required forms and additional information relating to submitting their Offer.

E.2. USE OF THE OFFER

In submitting its Offer, the Respondent is aware and accepts that the Principal will use the information provided:

a. as part of evaluating the Respondents suitability for Panel membership;

b. in determining a Panel Members suitability for any Contract award under the Panel.

E.3. IDENTITY OF RESPONDENT

The Respondent is required to complete *Form 1 – Corporate Identity and Status* to allow the Principal to confirm the Respondent's identity and contact details. If successful in becoming a Panel Member this information will be used to identify the Panel Member if a contract is awarded to that Member.

The Respondent must identify where its Permanent Operational Office (or Offices) are located and the offices from where the Services may be provided. The details are to include address, phone number, contact person and the nature of the office (e.g. head office, regional branch office etc.).

Information on Subconsultants is not to be included here - this information is requested in *Form 3 – Disclosures*.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

E.4. PRE-QUALIFICATION REQUIREMENTS

The Respondent must complete *Form 2- Pre-Qualification Requirements*.

The Respondent must confirm that it has at least one Specified Personnel responsible for the Service that:

- holds a recognised educational qualification in design[24] or is a registered architect; and
- has a minimum five (5) years' experience in the field of interior design and/or architecture.

Failure to comply with these pre-qualification requirements may eliminate the Respondent from further consideration.

E.5. COMPLIANCE AND DISCLOSURE REQUIREMENTS

The Principal will, as part of the assessment, consider the extent to which the Offer satisfies the following compliance and disclosure requirements as provided by the Respondent in *Form 3 – Disclosures* and in the forms as indicated below:

a. corporate identity and status, including nomination of business size, i.e. small, medium or large (Form 1),

b. compliance with the terms and conditions,

c. disclosures of proposed subconsultants,

d. conflict of interest,

e. criminal convictions,

f. insurance requirements,

g. Aboriginal business registration, and

h. Aboriginal business engagement and employment of Aboriginal people (*Forms 4 and 5*).

If the Respondent is the trustee of a trust, the Respondent must submit the trust deed for the trust to the Principal.

The Respondent acknowledges that the insurance provisions outlined in C.9 relating to proof of insurance, while detailing requirements for Panel Members once appointed to the Panel, also apply to the evaluation of Respondent's Offers for Panel membership. The Principal reserves the right to request copies of the Respondent's insurance policies and where these are withheld the Principal may decline to appoint a Respondent to the Panel.

Where a Respondent indicates that insurances will be obtained prior to Panel membership the Principal will advise any successful Respondent of their eligibility for Panel membership subject to the provision of proof of insurance. The Respondent will have five (5) Business Days to obtain and provide proof of the required insurances. Where required by the Principal the Respondent is to provide copies of the insurance

[24] *In accordance with the Design Institute of Australia, this is defined as having an Australian Qualified Framework (AQF) 6 Diploma or higher.*

Reference Only

policies obtained to the Principal within three Business Days. A failure to comply with these requirements may mean that the Principal declines to appoint the Respondent to the Panel.

The Principal reserves the right to reject any Offer that does not properly address any of the disclosure requirements, and/or which contains material departures from the terms of the Request.

E.6. ENGAGEMENT OF SUBCONSULTANTS

The Principal accepts that a Respondent may seek the assistance of another interior fitout and workplace design professional as a Subconsultant for certain work. The Respondent must clearly identify within their Offer the extent of any potential engagement or where the Respondent has relied on the experience or qualifications of any Subconsultant within the Respondent's Offer. Subconsultants are to be identified in Form 3 – *Disclosures*.

E.7. ABORIGINAL ENGAGEMENT

The Principal will also take into consideration the Respondent's level of Aboriginal Business engagement and level of employment of Aboriginal Persons. The Respondent is to provide details in relation to these areas on *Form 4 - Aboriginal Businesses Engaged as Suppliers or Subconsultants* and *Form 5 - Information on Employment of Aboriginal Persons*.

E.8. RECIPIENT CREATED TAX INVOICE AGREEMENT (RCTI)

Respondents must be registered for GST and must have an Australian Business Number (ABN).

The Principal and Panel Members will enter into an agreement in relation to GST in accordance with the Australian Tax Office's (ATO's) Goods and Services Tax Ruling (GSTR) 2000/10 paragraph 13(e). Within five Business Days of being notified of their appointment to the Panel and prior to any Contract being awarded Panel Members are required to lodge with the Principal a completed and signed Recipient Created Tax Invoice Agreement (RCTI). Where required, a copy of the RCTI can be obtained from the Principal.

E.9. QUALITATIVE REQUIREMENTS

Respondents must demonstrate their experience and skills through detailed responses in line with the requirements of each of the criteria outlined in E.9.3.

E.9.1. ADDRESSING THE QUALITATIVE REQUIREMENTS

It is in the Respondent's best interest to ensure that they fully understand what is required of them in their qualitative response and to ensure that they address those requirements in the manner expressed in the Request.

As Panel membership will be competitive and Panel numbers limited, Respondents should ensure that the evidence provided against the qualitative criteria directly relates to the identified criteria. Information that is of a generic promotional or advertising

Reference Only

nature, or which is not directly related to the specific criteria should not be submitted and may not be assessed.

Respondents should also be aware that limitations on the amount of content provided against the criteria have been identified in the relevant criteria section. In evaluating submissions, the Principal may not assess any material that exceeds the identified limits or which is considered not to be directly relevant to the identified criteria. The Principal reserves the right to reject any Offer which fails to comply with the limit restrictions applicable to any area.

Note – a reference to a page of content means the equivalent of one side of a sheet of A4 paper typed using a font of similar size and clarity to Arial size 11, with reasonable margins and headers/footers.

In preparing its Offer, the Respondent is to:

a. complete the forms provided at the end of this section and in doing so comply with the specified limits in relation to the provision of information - please refer to each section for the maximum amount allowed. Note, It is permissible to shrink or widen the columns and rows within the form tables, however other than this, the forms should be completed and submitted in the format provided;

b. structure its response in accordance with *Schedule 1 to Part E: Forms to be completed*;

c. address the qualitative criteria as outlined in clause E.9.3;

d. ensure that the content provided is directly relevant to the Services and to the criteria being addressed;

e. limit the information provided to relevant recent experience – in this instance recent means within the last ten (10) years;

f. clearly separate the experience or expertise relating to the engagement of a Subconsultant or other consultant outside of the Respondent's practice from that of the Respondent;

g. not provide resumes for any personnel (all relevant information is to be provided in *Form 6*);

h. take into account all requirements included in or referred to within the Request;

i. consider the requirements of and the type of services required by the Brief;

j. assume that the Principal has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for the Principal or any other Public Authority;

k. recognise that the qualitative criteria are not weighted equally, and

l. nominate any Offer information that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Request Conditions. Note - Respondents are to refer to section 8 of *Schedule 1 to Part B: Request Conditions* in relation to the Principal's position in regard to ongoing use of and access to the Respondent's Offer.

Reference Only

PART E

RESPONDENT TO READ AND KEEP THIS PART

E.9.2. EVALUATING THE QUALITATIVE CRITERIA

Respondents should note that the qualitative criteria will be evaluated in the context of Contracts potentially valued at up to $1,000,000 (GST inclusive).

The qualitative criteria are not weighted equally. Refer to the % weighting for each of the criteria outlined in E.9.3.

When assessing responses against the qualitative criteria, the Principal will assess the claims against the service requirements, the scope of the Panel and the role of the Department of Housing and Works.

Where it is deemed necessary to validate to claims made by a Respondent(s), the Respondent(s) will be requested to provide referees as part of the clarification process.

E.9.3. QUALITATIVE CRITERIA

As noted at E.9 the following criteria will be assessed for all Respondents.

Criterion 1 Personnel and Skills (Weighting 35%)

Using Form 6, the Respondent must identify up to TEN people as Specified Personnel that the Respondent proposes will be engaged to provide the services described in the Interior Fitout and Workplace Design Brief. The information to be provided will be limited to ONE page per person, and identify the individual's qualifications, employment status, role within the company, an overview of their knowledge and experience in interior fitout and workplace design and any area of relevant specialisation.

Personnel experience is to be limited to the past TEN years only.

Experience gained by the nominated individual whilst employed by or contracted to other firms may be included where this is clearly identified.

Respondents are requested to provide an Organisational Chart, as a separate document, to illustrate where in the structure of the firm the Specified Personnel are positioned.

In assessing Criterion 1, the Principal will assess the collective capacity and capabilities of the Specified Personnel, as well as assessing the nominated individual.

Criterion 2 Respondents Design Capability and Experience with Relevant Projects (Weighting 30%)

Respondents must provide in Form 7, a list of relevant projects undertaken by the Respondent in the last TEN years, in no more than a total of TWO pages.

Using Form 8 provided, Respondent's must then provide further details (in no more than a total of FIVE pages, illustrated with use of photos, pictures and words) of up to FOUR projects listed in Form 7, including:

a. the methodology adopted by the Respondent for the project providing evidence of services delivered in line with the Interior Fitout and Workplace Design Services Brief;

b. evidence of the commitment to design excellence and how it has been used to inform the desired outcome; and

Reference Only

c. a description of any value add services in relation to Activity Based Working/flexible working environments such as integrated ICT strategies and change management capabilities.

Project experience gained by individuals whilst employed in other firms must not be provided for in this criterion.

Criterion 3 Past Performance (Weighting 15%)

Using Form 9 Respondents must provide (in no more than a total of FOUR pages) evidence of successful outcomes for up to FOUR relevant projects that have been completed in the last TEN years. Evidence will focus on functionality, sustainability, timeliness, adherence to budgets, stakeholder satisfaction, and innovative workplace design solutions that maximise organisational benefits and performance.

Confirmation of past performance may be provided in the form of evidence of awards received or written client performance reports so long as they are not more than TEN years old.

The Respondent may also if it chooses as part of its Response provide referee reports for the Principal to consider in its assessment of the Response. If so, the Respondent must:

a. provide a minimum of three and a maximum of five referee reports for any works of a similar nature to the works the subject of this Request undertaken in the last three years for those referees;

b. provide each of the reports from the referees above in the format of the relevant "Supplier Referee Report" form available from the WA Government website,

   https://www.wa.gov.au/government/publications/supplier-referee-report-consultants to the extent that it is applicable to those referees, each reference being signed by the relevant referee; and

c. provide the names, addresses, phone numbers, and email addresses of each referee to the Principal as part of its submission.

Evidence of awards or reports will not form part of the FOUR page limit stated for this criterion.

The Department may also assess past performance using information about a Respondent held by the Department, including but not limited to, consultant performance reports.

Past performance can encompass experience gained in public and private sector commissions.

Past performance of individuals whilst employed in other firms must not be provided for in this criterion.

Reference Only

Criterion 4 Risk and Quality Management (Weighting 20%)

Using Form 10, Respondents must demonstrate (in no more than a total of TWO pages) their skill to deliver high-level interior fitout and workplace design outcomes for office buildings, including:

a. outlining and describing their understanding of the key risks and tasks that need to be addressed to ensure a successful outcome is achieved for projects undertaken through this Panel;

b. outlining their technical resources and the processes in place to ensure excellence in design, documentation and contract administration. In addition, they are to provide details of the controls which will ensure these processes are adhered to appropriately.

E.9.4. RESPONDENT SCORES AND RANKING

As summarised in B.7.2.1, provided that the prequalification and compliance requirements are met, Respondents will be ranked based on the assessment of their claims against the qualitative requirements and submitted fees, followed by a value for money assessment as described in B.7 to determine the final rankings for Respondents.

E.10. FEES

In submitting an Offer Respondents are to fully consider the details provided in relation to fees as follows.

All fees will be submitted as the maximum fee allowable.

E.10.1. PERCENTAGE FEE SCHEDULE

The Percentage Fee Schedule indicates the percentage of the Feeable Value the Respondent will charge as its Contract Fee to undertake the Contract.

Respondents will submit their Percentage Fee Schedule for both conventional and complex projects, covering contracts up to $250,000, using Form 11. The percentage fee shall include:

- All Services required to undertake the project.
- Engagement and management of subconsultants (subject to prior Principal approval.)
- Site visits within the Perth metropolitan area (both travel and time requirements).
- Preparation of reports.

The Respondent is encouraged to provide percentage rates for all Feeable Values, even if the resulting Contract Fee is above the Panel threshold.

If a rate is not provided in a particular cell of the Percentage Fee Schedule:

a. for the purposes of assessment, an average will be used for evaluating the Percentage Fee Schedule, as described below; and

b. the particular cell it will be read as ‘Not Applicable’, and the Panel Member will not be considered for Contracts that require the application of information in that cell to calculate the Contract Fee.

Reference Only

The Principal has developed a confidential representative sample of contracts for the purposes of evaluating Respondents submitted Percentage Fee Schedule.

The Respondent's Percentage Fee Schedule in Form 11 will be evaluated and taken into consideration as part of the selection process for membership by the Principal by:

a. applying the percentage values provided by the Respondent to each of the representative sample of contracts to arrive at a total hypothetical fee that would have been paid had the Respondent obtained all the work in the representative sample;

b. applying an Aboriginal Business and Employment Tendering Preference, where applicable, which would reduce for evaluation purposes the hypothetical fee by 10% of the preference amount up to a maximum of $250,000; and

c. ranking each Respondent based on the total hypothetical fee for all contracts in the representative sample.

Should Offers be received from interstate or New Zealand, the Aboriginal Business and Employment Tendering Preference may not apply.

E.10.2. HOURLY RATES

Respondents are to complete *Form 12 – Hourly Rates Fee Schedule*.

The hourly rates submitted by the Respondent will be considered in the evaluation of the Respondent's Offer. The Principal reserves the right to set aside an Offer where the Respondent's hourly rates are assessed as being either too high or two low when compared to the assessed quality of the Offer and to other Respondents.

Respondents should refer to Schedule 1 to Part C which details the way in which the submitted hourly rates will be applied to Contracts.

In completing Form 12 Respondents are to insert the appropriate hourly rate in each cell in the schedule that they propose will be used to calculate non-standard Contract Fees. The rate identified by the Respondent must incorporate all costs of providing the services as detailed in the Brief.

Note - where no rate is included in a particular cell it will be read as 'Not Applicable', and the Respondent will not be considered for Contracts that require the application of information in that cell to calculate the Contract Fee.

E.11. RESPONDENT'S REPRESENTATION

In making an Offer in reply to the Request the Respondent offers to provide the Services under this Panel as described in the Request.

The completed forms contained in *Schedule 1 to Part E: Forms to be Completed* and any other information provided will comprise the Respondent's Offer. The Respondent warrants that the

a. information included in the Offer is true and accurate, and

b. that the Offer is signed by a person authorised to do so on behalf of the Respondent.

Reference Only

SCHEDULE 1 TO PART E: FORMS TO BE COMPLETED

This signature page and all forms included in this Schedule are to be returned and will form part of the Offer. A failure to fully complete and return these forms may lead to the Offer being set aside pursuant to clause B.7.1.

Respondents can expand the forms as required, noting page limits where they apply.

CONFIRMATION OF OFFER

The Respondent confirms that this Offer is signed by a person authorised to do so on behalf of the Respondent. The Respondent warrants that the information included in the Offer is true and accurate.

Signature: ……	Witness Signature: ……
Name: ……	Name: ……
Position: ……	Position: ……
Date: ……	Date: ……

Reference Only

FORMS TO BE COMPLETED BY RESPONDENT

RESPONDENT TO COMPLETE FORM 1 – CORPORATE IDENTITY AND STATUS (REFER E.3)	
(a) Name of legal entity:	
(b) ACN (if a company):	
(c) ABN:	
(d) Principal Permanent Operational Office[25]:	
(e) Other Permanent Operational Office(s):	
(f) Registered Business Name:	
(g) Firm size[26]:	Small (less than 20 employees) ☐ Medium (Between 20 to 50 employees) ☐ Large (50 employees or more) ☐
(h) Contact Person:	
(i) Contact Person Position Title:	
(j) Email:	
(k) Telephone:	
(l) Website Address:	
(m) Nominated Panel Member Representative, phone number and email:	
(n) Address for Service of Contractual Notices:	

Reference Only

[25] *This is deemed to be where the Offer is submitted from*
[26] *Firm size takes into consideration the size of the whole legal entity, including any national offices but not including international offices.*

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE **FORM 2 – PREQUALIFICATION REQUIREMENTS** **(REFER E.4)**	
The Respondent confirms that it has at least one Specified Personnel responsible for the Service that: • holds a recognised educational qualification in design (*in accordance with the Design Institute of Australia, this is defined as having an Australian Qualification Framework (AQF) 6 Diploma or higher*) or is a registered architect; AND • has a minimum of five (5) years' experience in the field of interior design and/or architecture.	☐ Yes ☐ No
Details of: • Name: _____ • Educational qualification in design, Name of Institution and year completed: _____ _____ OR • Architects Registration Number and Date of initial registration: _____	

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE **FORM 3 – DISCLOSURES** **(REFER E.5)** ***Respondents are to Complete Disclosure Forms 3 to 5***	
A. Legal Entity Structure Please nominate the structure of the legal entity submitting this Offer by ticking one of the boxes below.	
Sole Trader	☐
Partnership (Attach on a separate sheet, the full names of all partners).	☐
Incorporated Company (Attach a copy of the ASIC registration details including the full names of directors and shareholders. If the Company is a Trustee then also provide the names of the trust beneficiaries and copy of the full Trust deed including all variations).	☐
Incorporated Joint Venture (attached a copy of the ASIC registration details including the full names of directors and shareholders).	☐
Unincorporated Joint Venture (i.e. Consortium) (Attach details of each member of the consortium as appropriate to the corporate structure of the member)	☐
Trading Trust (Attach a copy of the full Trust deed including any variations).	☐
Other (Attach details).	☐

RESPONDENT TO COMPLETE **B. Subconsultants** **(REFER E.6)** Does the Respondent intend to engage, another person or entity as a Subconsultant in connection with the supply of the Services?			
Yes ❑		No ❑	
If yes, Respondents are to complete the following table.			
Legal Entity Name	ACN/ABN	Type of Services to be provided	Location where the Services will be performed by the Subconsultant

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE

C. Criminal Convictions

Has the Respondent or any person proposed in the Offer (including any person associated with a proposed Subconsultant) been convicted of a criminal offence that is punishable by imprisonment or detention?

Yes ❑	No ❑

If yes, provide details:

RESPONDENT TO COMPLETE

D. Conflict of Interest

Does the Respondent or any identified Subconsultant have any actual, potential or perceived conflict of interest in relation to the Panel?

Yes ❑	No ❑

If yes, provide details:

Reference Only

RESPONDENT TO COMPLETE			
E. Compliance with terms of the Request **(REFER E.5)** The Respondent confirms that its Offer complies with the terms of the Request.			
Yes	❑	No	❑

RESPONDENT TO COMPLETE			
F. Insurance requirements The Respondent acknowledges that the Insurance provisions outlined in **C.9** relating to proof of insurance, while detailing requirements for Panel Members, also apply to the evaluation process for Panel membership. The Principal reserves the right to request copies of the Respondent's insurance policies and where these are withheld the Principal may decline to appoint a Respondent to the Panel. Does the Respondent meet the insurance requirements as set out in the Request?			
Yes	❑	No	❑
If Yes provide the following insurance details			

	Public Liability	Professional Indemnity	Workers' Compensation
Insurer			
ACN			
Policy No			
Insured Amount			
Expiry Date			
Exclusions, if any			

If no, does the Respondent confirm that within five (5) Business Days of being notified of their eligibility for Panel membership and prior to admission to the Panel it will obtain and provide proof of the required insurances, as set out in the Request?			
Yes	❑	No	❑

Reference Only

RESPONDENT TO COMPLETE			
G. Aboriginal Business **(REFER E.5)** Is the Respondent a registered Aboriginal Business with either the Aboriginal Business Directory of Western Australia or Supply Nation?			
Yes	❑	No	❑

Reference Only

RESPONDENT TO COMPLETE ***Form 4* – ABORIGINAL BUSINESSES ENGAGED AS SUPPLIERS OR SUBCONSULTANTS (REFER TO E.7)**		
SECTION A Suppliers	Name of Supplier	Materials / Goods Supplied
	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....
SECTION B Subconsultants	Name of Subconsultant	Service
	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....	1)……..... 2)……..... 3)……..... 4)……..... 5)……..... 6)……..... 7)…….....

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE

***Form 5* – INFORMATION ON EMPLOYMENT OF ABORIGINAL PERSONS** **(REFER TO E.7)**

Note: All costs used and shown in this document must include all allowances for the Goods and Services Tax (GST).

	Position with Respondent	Name of Aboriginal Person Employed	Annual Employment Costs (GST inclusive)
SECTION A Respondent	1) 2) 3) 4) 5) 6) 7)	1) 2) 3) 4) 5) 6) 7)	1) $ ..... 2) $ ..... 3) $ ..... 4) $ ..... 5) $ ..... 6) $ ..... 7) $ .....
		SUB-TOTAL 1	$ .....
	Name of Subconsultant or Supplier	Details of Aboriginal Person Employed	Employment Costs (GST inclusive)
SECTION B Subconsultants or Suppliers	1) 2) 3) 4) 5) 6) 7)	1) 2) 3) 4) 5) 6) 7)	1) $ ..... 2) $ ..... 3) $ ..... 4) $ ..... 5) $ ..... 6) $ ..... 7) $ .....
		SUB-TOTAL 2	$ .....
		TOTAL VALUE (SUB-TOTAL 1 + SUBTOTAL 2)	$ .....

Reference Only

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE

Form 6 – CRITERION 1 – PERSONNEL AND SKILLS **(REFER TO E.9.3)**

The Respondent provides the following information on specified personnel. No more than ONE page per person. Respondents are requested to include ONE organisational chart as a separate document.

Employee Name:	**Position:**	**Employment Status:**

Qualifications	University / Institution	Year Completed

Area of Expertise	

Relevant Employment History (no more than 10 years)

Project *(Brief description)*	Client *(Include contact name and phone number)*	Project budget	Firm Fee	Period of involvement of individual	Individual's Role	Employer

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE FORM 7 - CRITERION 2 – RESPONDENTS DESIGN CAPABILITY AND EXPERIENCE WITH RELEVANT PROJECTS – Within the last 10 years only (maximum of TWO pages in total) (REFER TO E.9.3)				
Project Name and Client	**Description of Services Provided**	**Commission Value (GST inclusive)**	**Project Value (GST inclusive)**	**Term of Commission (start and end/month and year)**

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE	
FORM 8 - CRITERION 2 – RESPONDENTS DESIGN CAPABILITY AND EXPERIENCE WITH RELEVANT PROJECTS - (maximum of FIVE pages in total)	**(REFER TO E.9.3)**
Respondent to provide details of FOUR projects outlined in Form 7, including: a. *the methodology adopted by the Respondent for the project providing evidence of services delivered in line with the Interior Fitout and Workplace Design Services Brief;* b. *evidence of the commitment to design excellence and how it has been used to inform the desired outcome; and* c. *a description of any value add services in relation to Activity Based Working/flexible working environments such as integrated ICT strategies and change management capabilities.*	
Relevant Project (1)	
Relevant Project (2)	

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE ***Form 9* – CRITERION 3 – PAST PERFORMANCE** **(REFER TO E.9.3)**
Evidence of successful outcomes for up to FOUR relevant projects in no more than FOUR Pages in total, completed in the last TEN years. Evidence will focus on functionality, sustainability, timeliness, adherence to budgets, stakeholder satisfaction, and innovative workplace design solutions that maximise organisational benefits and performance.
Project Name _____ Completion Date _____
Project Name _____ Completion Date _____

RESPONDENT TO COMPLETE

RESPONDENT TO COMPLETE AND RETURN THIS PART

Form 10 – CRITERION 4 – RISK AND QUALITY MANAGEMENT	**(REFER TO E.9.3)**
Respondent to demonstrate, in no more than TWO pages, their skill to deliver high-level interior fitout and workplace design outcomes for office buildings, including: a. *outlining and describing their understanding of the key risks and tasks that need to be addressed to ensure a successful outcome is achieved for projects undertaken through this Panel;* b. *outlining their technical resources and the processes in place to ensure excellence in design, documentation and contract administration. In addition, they are to provide details of the controls which will ensure these processes are adhered to appropriately.*	

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE

Form 11 – Submitted Schedule of Fees **(REFER TO E.10.1)**

Name of Respondent: _____

All fees will be submitted as the maximum fee allowable. Please complete all cells regardless of whether the resulting Contract Fee is above the Panel threshold.

Project Feeable Value $ (GST Excl.)	**Percentage (%) of Feeable Value (CONVENTIONAL) (GST Excl.)**	**Percentage (%) of Feeable Value (COMPLEX) (GST Excl.)**
0 – 50,000		
50,001 – 100,000		
100,001 – 200,000		
200,001 – 300,000		
300,001 – 400,000		
400,001 – 500,000		
500,001 – 600,000		
600,001 – 700,000		
700,001 – 800,000		
800,001 – 900,000		
900,001 – 1,000,000		
1,000,001 – 2,000,000		
2,000,001 – 3,000,000		
3,000,001 – 4,000,000		
4,000,001 – 5,000,000		
5,000,001 – 6,000,000		
6,000,001 – 7,000,000		
7,000,001 – 8,000,000		
8,000,001 – 9,000,000		
9,000,001 – 10,000,000		
10,000,001 – 11,000,000		

RESPONDENT TO COMPLETE AND RETURN THIS PART

RESPONDENT TO COMPLETE

***Form 12* – HOURLY RATES FEE SCHEDULE** **(REFER TO E.10.2)**

Name of Respondent: _____

The Respondent identifies the following hourly rates in line with the terms of the Request and describes the experience etc associated with each position (e.g. Architect: less than ten years' experience).

The template can be amended to reflect the organisational structure of the Respondent.

All fees will be submitted as the maximum fee allowable.

Position within Practice	Experience	$/Hour (GST Exclusive)	GST (@ 10%)	$/Hour GST Inclusive)
Partner / Director				
Associate				
Senior Architect/Designer				
Architectural Graduates/Junior Designer				
Draftsperson				
Contract Administrator (performing role of Superintendent's Representative)				

RESPONDENT TO COMPLETE AND RETURN THIS PART